

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Amendments and Compilation of Chapter 15-23
Hawaii Administrative Rules

September 7, 2005

SUMMARY

1. §15-23-5 is amended.
2. §15-23-7 is amended.
3. §15-23-8 is amended.
4. §15-23-15 is amended.
5. §15-23-22 is amended.
6. §§15-23-30 to 15-23-34 are amended.
7. §15-23-40 is amended.
8. §15-23-62 to 15-23-64 are amended.
9. §15-23-67 to 15-23-69 are amended.
10. §15-23-73 is amended.
11. §15-23-75 is amended.
12. §15-23-77 is amended.
13. §§15-23-87 to 15-23-89 are amended.
14. Chapter 23 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 23

THE KAKAAKO COMMUNITY DEVELOPMENT DISTRICT RULES

FOR THE MAKAI AREA

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SUBCHAPTER 1

GENERAL PROVISIONS

§15-23-1 General purposes. (a) The legislature of the State of Hawaii, by chapter 206E, HRS, established the Kakaako community development district (hereinafter "Kakaako district"). In so doing, the legislature determined that there was a need for replanning, renewal, or redevelopment of that area. The legislature found the following with respect to the Kakaako district:

- (1) The Kakaako district is centrally located in Honolulu proper, in close proximity to the central business district, the government center, commercial and market facilities, major existing and contemplated transportation routes and recreational and service areas;
- (2) The Kakaako district, because of its present function as a service and light industrial area, is relatively underdeveloped and has, especially in view of its proximity to the

urban core where the pressure for all land uses is strong, the potential for increased growth and development that can alleviate community needs such as low- or moderate-income housing, parks and open space, and commercial and industrial facilities;

- (3) The Kakaako district, if not redeveloped or renewed, has the potential to become a blighted and deteriorated area. Because of its present economic importance to the State in terms of industry and subsequent employment, there is a need to preserve and enhance its value and potential; and
- (4) Kakaako has a potential, if properly developed and improved, to become a planned new community in consonance with surrounding urban areas.

(b) The legislature declared further that there exists within the State vast, unmet community development needs, such as:

- (1) Suitable housing for persons of low or moderate income;
- (2) Sufficient commercial and industrial facilities for rent;
- (3) Residential areas which have facilities necessary for basic livability, such as parks and open space; and
- (4) Areas which are planned for mixed uses.

The legislature declared that existing laws and private and public mechanisms have either proven incapable or inadequate to meet these needs. The legislature called upon the Hawaii community development authority to provide a new, innovative form of development and regulation to meet these needs.

(c) The legislature authorized and empowered the Hawaii community development authority to develop a community development plan for the district. It noted that the plan should include a mixed-use district whereby industrial, commercial, residential, and public uses may coexist compatibly in a vertical as well as horizontal mixture within a single development

lot. The legislature further directed that in planning for such mixed uses, the authority shall also respect and support the present function of Kakaako as a major economic center, providing significant employment in such areas as light industrial, wholesaling, service, and commercial activities.

(d) The legislature further authorized and empowered the authority to establish and adopt community development rules under chapter 91, HRS, on health, safety, building, planning, zoning, and land use which shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon.

(e) In accordance with the declarations of the legislature, the authority has developed community development plans for the Kakaako district. As an integral part of implementing these plans, and in compliance with the mandate of the legislature, the authority has developed these innovative community development rules for the Kakaako district.

(f) It is the intent of the authority that these rules shall be established and adopted to implement the purposes and intent of the legislature as set forth in chapter 206E, HRS. It is the further intent of the authority that these rules shall implement the policies and programs relating to the Kakaako district as set forth in the provisions of the community development plan.

(g) So that Kakaako can be developed as an attractive and desirable urban community, the authority shall interpret these rules to encourage flexibility of design. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7)

§15-23-2 Development guidance policies. The development guidance policies governing the authority's actions in the Kakaako district have been set forth by the legislature in section 206E-33, HRS.

[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02;
comp 12/9/02; comp NOV 03 2005] (Auth: HRS
§206E-33) (Imp: HRS §206E-33)

§15-23-3 Title. These rules shall be known and may be cited as the Kakaako community development district rules for the makai area. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-5, 206E-7) (Imp: HRS §§206E-5, 206E-7)

§15-23-4 Plan and design guidelines incorporated by reference. The makai area plan and makai area design guidelines, are hereby incorporated by reference and made a part of this chapter. [Eff 2/24/90; comp 10/10/98; am and comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §206E-5) (Imp: HRS §206E-5)

§15-23-5 Definitions. Except as otherwise stated in this chapter, all of the definitions contained in the land use ordinance of the city and county of Honolulu are by reference incorporated herein and made a part hereof. As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

"Arcade" means a protected walkway that provides public pedestrian access contiguous to a building. It is open on at least one long dimension, except for structural columns, and has an average unobstructed ceiling height of at least twelve feet. It shall have a clear walkway width of at least twelve feet and not less than five hundred square feet of covered area, including the area occupied by the structural columns. An arcade is not more than eighteen inches above adjoining grade;

"Authority" means the Hawaii community development authority established by section 206E-3, HRS;

"Awning" means a temporary shelter supported entirely from the exterior wall of a building;

"Development" means the construction of a new building or other structure on a development lot, the relocation of an existing building on another development lot, or the use of a tract of land for a new use, or the enlargement of an existing building or use;

"Development lot" means any lot or a combination of lots developed in accordance with the provisions of these rules;

"Eleemosynary organization" means a society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, whose charter or other enabling act contains a provision that, in the event of dissolution, the land owned by such society, association, or corporation shall be distributed to another society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes;

"Executive director" means the executive director of the authority;

"Floor area" means the area of the several floors of a building excluding unroofed areas measured from the exterior faces of the exterior walls or from the center line of party walls separating portions of a building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above, including but not limited to elevator shafts, corridors, and stairways. Excluded from the floor area are parking facilities and loading spaces, including their driveways and accessways, attic areas with headroom less than seven feet, passageways, arcades, covered rooftop areas, and rooftop machinery equipment rooms and elevator housings on the top of buildings;

"Floor area ratio" or "FAR" means the ratio of floor area to land area expressed as a per cent or decimal which shall be determined by dividing the total floor area on a development lot by the lot area of that development lot;

"Ground elevation" means the existing grade of a sidewalk adjacent to any front yard property line or the adjacent street right-of-way line if no sidewalk exists;

"Ground floor windows" means windows extending over at least fifty per cent of the length and twenty-five per cent of the area of ground elevation walls. Ground elevation walls include all exterior wall areas up to nine feet above the ground floor that abut front yards. Ground floor windows must be either windows that allow views into working areas or lobbies, pedestrian entrances, or display windows.

"Hawaii capital district" means a special district established by Article 7 of the land use ordinance;

"Kakaako community development district plan", "Kakaako community development plan", or "Kakaako plan", means the development plans referred to as the "mauka area plan" and the "makai area plan";

"Kakaako special design district ordinance" means Ordinance No. 80-58 of the city and county of Honolulu, as amended;

"Land use ordinance" or "LUO" means Ordinance No. 86-96 of the city and county of Honolulu;

"Land use zone" means any zone delineated on the land use plan map of the makai area plan;

"Lot" means a duly recorded parcel of land which can be used, developed or built upon as a unit;

"Makai area" means that portion of the Kakaako district, established by section 206E-32, HRS, which is bounded by Ala Moana Boulevard, inclusive from Punchbowl Street to Piikoi Street, from Piikoi Street to its intersection with the Ewa boundary of Ala Moana Park also identified as the Ewa boundary of tax map key 2-3-37: 01; the Ewa boundary of tax map key 2-3-37: 01 from its intersection with Ala Moana Boulevard to the shoreline; the shoreline from its

intersection with the property line representing the Ewa boundary of property identified by tax map key 2-3-37: 01 to the property line between Pier 2 and Pier 4 from its intersection with the shoreline to Ala Moana Boulevard; and Ala Moana Boulevard from its intersection with the property line between lands identified by Pier 2 and Pier 4 to Punchbowl Street. The makai area also includes that parcel of land identified by tax map key 2-1-14: 16, situated mauka of Piers 6 and 7 and makai of Nimitz Highway, being the site for the existing Hawaiian Electric power plant and related facilities;

"Makai area design guidelines" means the design guidelines for the makai area adopted on February 2, 2002;

"Makai area plan" means the development plan for the makai area of the Kakaako community development district adopted on September 29, 1998, as amended on December 9, 2002 and November 3, 2005 ;

"Mauka area" means that portion of the Kakaako community development district, established by section 206E-32, HRS, which is bounded by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard, exclusive, from Piikoi Street to its intersection with Punchbowl Street; and Punchbowl Street to its intersection with King Street;

"Mauka area plan" means the development plan for the mauka area of the Kakaako community development district originally adopted on February 16, 1982, as amended January 10, 1983, May 18, 1984, September 6, 1984, April 26, 1985, August 17, 1985, July 15, 1988, June 28, 1989, January 18, 1990, July 16, 1990, September 5, 1997, August 3, 1999, and January 9, 2002;

"Mixed use" means the combination of more than one land use within a development project or area;

"MUZ" means a mixed-use zone where commercial, residential, and community service uses are permitted;

"MUZ-I" means a mixed-use zone where waterfront industrial and commercial uses are permitted;

"Nonconforming use" means an activity using land, buildings, signs, or structures for purposes which were legally established within the makai area prior to but would not be permitted as a new use in any of the land use zones established by this chapter;

"Open space" means noncontiguous, unbuilt and unobstructed spaces at ground elevation between and adjacent to public and private structures;

"Open space systems" mean continuous networks of open space that result from public rights-of-way, view corridors, building setback areas, parks and private open spaces;

"Passageway" means a ground floor, cross-block pedestrianway that facilitates pedestrian movement, is open to the public, and has a minimum clear width of thirty feet and minimum clear height of twelve feet. To qualify, a passageway shall also be open to the sky for at least twenty-five per cent of its area, and all openings to the sky must not be less than twelve feet in any dimension. Passageways must link active use areas, such as lobbies, courtyards, retail shops, and drop-offs. Passageways are exempt from parking, loading, and public facilities fee requirements.

"Platforms" mean a building form providing a base for tower structures. The platforms may contain extensive parking areas as well as other permitted uses;

"Preservation" means keeping a particular property in its present condition. The property may already be in a restored or rehabilitated condition;

"Protection" means undertaking actions or applying measures which will prevent the property from deterioration or loss or which will keep it from being destroyed or abused;

"Public improvement" means any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide public needs as: vehicular and pedestrian circulation systems, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility and energy services;

"Public project" means any project or activity of any county or agency of the State conducted to fulfill a governmental function for public benefit and in accordance with public policy;

"Reconstruction" means the reproduction by new construction of a building, structure, object or parts thereof as it originally appeared;

"Reflective surface" means any glass or other surface, such as polished metal, specified in the manufacturer's literature having reflectance (designated by such terminology as average daylight reflectance, visible light reflectance, visible outdoor reflectance, and comparable terms) of over thirty per cent;

"Rehabilitation" means returning a property to a useful state, thus allowing it to be used while preserving those portions or features considered historically, architecturally, or culturally significant;

"Restoration" means recovering accurately the authentic form and details of a property, or a structure and its setting, usually by renovating a later work, or replacing missing earlier work;

"Tower" means a single building form which may be situated above or abutting a platform; and

"Tower footprint" means the largest area of a single floor of a building above sixty-five feet in height as measured from its exterior faces or edges. [Eff 2/24/90; am 1/7/91; am 2/22/93; am and comp 10/10/98; am 1/13/00; am and comp 2/2/02; am and comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-2, 206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-2, 206E-4, 206E-5, 206E-7)

§15-23-6 Rules for construction of language.

The following rules of construction apply to the text of this chapter.

- (1) The particular shall control the general;
- (2) In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, map, summary

- table, or illustrative table, the text shall control;
- (3) The word "shall" is always mandatory and not discretionary. The word "may" is permissive;
 - (4) Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary;
 - (5) A "building" or "structure" includes any part thereof;
 - (6) The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for", or "occupied for";
 - (7) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity;
 - (8) Unless the context clearly indicates the contrary, where a rule involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or", or "either...or", the conjunction shall be interpreted as follows:
 - (A) "And" indicates that all the connected items, conditions, provisions, or events shall apply.
 - (B) "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
 - (C) "Either...or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination;
 - (9) The word "includes" shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of kind or character. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005]

(Auth: HRS §§206E-4, 206E-7) (Imp: HRS §§206E-4, 206E-7)

§15-23-7 Establishment of the Kakaako community development district. The Kakaako district was established by the legislature in 1976. As originally established, the district included that area bounded: by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard from Piikoi Street to its intersection with Punchbowl Street; and Punchbowl Street to its intersection with King Street. The legislature, during its 1982, 1987, and 1990 sessions, revised the district's boundary to include an area of approximately 221 acres makai of Ala Moana Boulevard. The district's present boundary is defined in section 206E-32, HRS, and is delineated on Exhibit 1, entitled "Makai Area Context Plan", dated September 2005, and attached at the end of this chapter. [Eff 2/24/90; am 1/7/91; am and comp 10/10/98; am 1/13/00; comp 2/2/02; am and comp 12/9/02; am and comp NOV 03 2005]
(Auth: HRS §206E-32) (Imp: HRS §206E-32)

§15-23-8 Establishment and scope of controls.
(a) In harmony with the purpose and intent of chapter 206E, HRS, these rules are established by the Hawaii community development authority for the makai area of the Kakaako district controlling, regulating, and determining: the area of lots; height of buildings; minimum yards and setbacks; required open spaces; the density of buildings; the location and amount of residential uses, commercial uses, recreational uses, waterfront industrial uses, public uses, and other appropriate uses; the location of buildings and other structures; off-street loading requirements; payment of public facilities fee requirements; architectural design; urban design; historic and cultural sites; circulation criteria; environmental standards; and other appropriate regulations relating to land use, zoning, and planning for buildings and structures for

all properties within the makai area of the Kakaako district.

(b) This chapter, together with the makai area plan of the Kakaako District, shall govern all developments and use of properties within the makai area. In case of any discrepancy between the provisions of this chapter and the makai area plan, this chapter shall control.

(c) No building permit shall be issued for any development within the makai area unless the development conforms to the provisions of the makai area plan and this chapter.

(d) All developments, proposed developments, and properties within the makai area shall be subject to all of the provisions of this chapter and the makai area plan. This requirement shall apply notwithstanding the fact that at the effective date of this chapter, a city and county of Honolulu building permit has been applied for or has been issued for the developments, proposed developments, or properties; provided that such requirement shall not apply if a city and county of Honolulu building permit has been issued, substantial expenditures have been incurred, and substantial changes in the land have already occurred. Substantial changes in the land shall be evidenced by substantial excavations for foundations.

(e) No public improvement or project within the makai area shall be initiated or adopted unless it conforms to and implements the makai area plan and this chapter.

(f) Except as otherwise specifically provided, the provisions of this chapter shall supersede the provisions of the city and county of Honolulu's development plan (Ordinance No. 81-79, as amended), the provisions of the Kakaako special design district ordinance (Ordinance No. 80-58, as amended), the provisions of the Hawaii Capitol District Ordinance (Article 7, land use ordinance), and the provisions of the land use ordinance (Ordinance No. 86-96, as amended) as they all shall relate to properties within the Kakaako district. The foregoing ordinances are hereby declared to be inconsistent with this chapter,

and shall therefore be inapplicable to developments within the district unless otherwise specifically stated.

(g) Except as otherwise specifically stated in this chapter, all other rules, laws, and ordinances shall continue to remain applicable to the developments and properties within the Kakaako district.

(h) All agencies of the city and state governments shall perform their duties, functions, and powers which affect the Kakaako district in accordance with the provisions of the Kakaako plans and this chapter.

(i) Project plans that have been approved as to project eligibility shall not be required to comply with the provisions of this chapter or the makai area plan that have been amended subsequent to said approval and prior to construction. However, construction not in compliance with said amended provisions shall be regarded as nonconforming for the purposes of this chapter. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-1, 206E-4, 206E-5, 206E-7, 206E-13, 206E-33) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7, 206E-13, 206E-33)

§15-23-9 REPEALED. [R 10/10/98]

§15-23-10 Project eligibility review. (a) The executive director may require, prior to receipt of any application for a development permit, a project eligibility review of the development project to consider the project's relationship to the makai area plan, its impact on infrastructure facilities such as streets, pedestrian and bicycle circulation, sanitary sewers, drainage and water, and to improve efficiency and avoid unnecessary delays and expense in processing the formal development application. No development application for which a project eligibility review has

been required shall be considered until the project eligibility review has been completed.

(b) To conduct project eligibility review, the applicant shall provide sufficient information that the executive director may reasonably request, such as the proposed site plan, basic massing, floor area allocation and location of proposed uses, off-street parking and loading, pedestrian and vehicular circulation, topography (existing and proposed), and location of existing and proposed improvements and utilities.

(c) To the extent possible, project eligibility review shall be completed within thirty days of the executive director's determination to require the review.

(d) Developments shall not be approved unless adequate infrastructure facilities are or will be made available to service the proposed development prior to occupancy. The executive director may consult with applicable governmental agencies regarding the adequacy of infrastructure requirements. Any development approval may be conditioned with the requirement that the concerns and requirements of appropriate governmental agencies relative to the adequacy of infrastructure facilities for the proposed development are satisfied.

(e) Notwithstanding the requirement for a project eligibility review, potential applicants may seek preliminary review of their proposed developments with the executive director prior to submitting an application for a development permit. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-11 Development permits. (a) A development permit certifying that the development complies with this chapter and the makai area plan shall be obtained from the authority prior to the issuance of a building permit.

(b) An application to the authority for a development permit shall include complete, detailed information showing that the development complies with all of the provisions of this chapter and the makai area plan. The authority may determine the nature and extent of the information required in the application.

(c) Development permits approved by the authority or executive director may be amended by the same provided the applicant demonstrates how the amendment would advance the purposes of redevelopment and be consistent with the intent of this chapter and the makai area plan. When considering a request for amendment to a development permit, the following shall be adhered to:

- (1) A public hearing shall be held if the amendment concerns an issue that would have required a public hearing prior to issuance of a development permit and the amendment does not qualify for administrative amendment as delegated by the authority to the executive director; and
- (2) The authority or executive director, as the case may be, may attach conditions or require compliance with any other provisions of this chapter or the makai area plan.
[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005]
(Auth: HRS §§206E-4, 206E-5, 206E-7)
(Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-12 Administration. The authority, through its executive director, shall administer the provisions of this chapter. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-13 Appeals. (a) The authority shall hear and determine appeals from the actions of the executive director in the administration of this

chapter. An appeal shall be sustained only if the authority finds that the executive director's action was based on an erroneous finding of a material fact, or that the executive director had acted in an arbitrary or capricious manner or had manifestly abused discretion.

(b) All appeals and appeal procedures shall comply with the provisions of subchapter 7 of chapter 15-16. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005 1 (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]

§15-23-14 Variances. (a) The authority shall hear and determine petitions for varying the application of this chapter with respect to a specific parcel of land and building, and may grant a variance based on unnecessary hardship if the record shows that:

- (1) The applicant would be deprived of the reasonable use of land or building if it were used only for the purpose allowed in that zone;
- (2) The request of the applicant is due to unique circumstances and not the general conditions in the neighborhood, so that the reasonableness of the neighborhood zoning is not drawn into question; and
- (3) The use sought to be authorized by the variance will not alter the essential character of the locality nor be contrary to the intent and purpose of this chapter or the Kakaako plan.

(b) The authority shall specify the particular evidence which supports the granting of a variance. The authority may impose reasonable conditions in granting a variance.

(c) Prior to making a determination on a variance application, the authority shall hold a public hearing. The public hearing shall afford

interested persons a reasonable opportunity to be heard.

(d) Any variance granted under the provisions of this section shall automatically terminate if a development permit for a development requiring said variance has not been issued within two years from the date of granting the variance. This time limit may be extended for a period not to exceed two years, on the authority's approval of the applicant's request and justification in writing for an extension, provided the request and justification are received by the authority at least one hundred days in advance of the automatic termination date of the variance and there are no material changes in circumstances which may be cause for denial of the extension. Prior to making a determination on a request for extension, the authority shall hold a public hearing.

(e) All requests for variances and the applicable requirements and procedures thereto shall comply with subchapter 5 of chapter 15-16. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-15 Nonconformities. (a) Except as otherwise provided, nonconforming uses of land and structures, and nonconforming lots, structures, parking, and loading within the makai area may be continued subject to the provisions of this section.

(b) Any provision to the contrary notwithstanding, existing industrial and commercial uses which meet reasonable performance standards as contained in this chapter shall be permitted to continue in appropriate locations within the district.

(c) Nonconforming uses may be permitted anywhere within the existing makai area.

(d) Nonconforming use of land shall not:

- (1) Be enlarged, increased, or extended to occupy a greater area of land than was occupied on October 10, 1998;

- (2) Continue if it ceases for any reason (except where government action impedes access to the premises) for a period of more than six consecutive months or for twelve months during any three-year period; or
 - (3) Be moved in whole or in part to any portion of the lot or parcel other than that occupied by the use on October 10, 1998.
- (e) The following requirements apply to nonconforming uses of structure:
- (1) Nonconforming use of structure shall not extend to any part of the structure which was not manifestly arranged or designed for the use on October 10, 1998; and a nonconforming use shall not be extended to occupy any land outside the structure. The structure shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered;
 - (2) Nonconforming use of structure shall not continue if it is discontinued for twelve consecutive months or for eighteen months during any three-year period;
 - (3) If structural alterations are not made, any nonconforming use of a structure, or structure and premises in combination, may be changed to another nonconforming use of the same nature, or to a more restricted use, or to a conforming use; provided that change to a more restricted use or to another nonconforming use may be made only if the relation of the structure to the surrounding property is such that adverse effects on occupants and neighboring property will not be greater than if the original nonconforming use continued;
 - (4) On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, roofs, fixtures, wiring, or plumbing, to an extent

not exceeding ten per cent of the current replacement value of the building; provided that the cubic content of the building as it existed on October 10, 1998, shall not be increased; and

- (5) Nothing contained in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of that official.

(f) The following requirements apply to nonconforming structures:

- (1) A nonconforming structure may be continued as long as it remains otherwise lawful;
- (2) A nonconforming structure may be altered in any way which does not increase its nonconformity. However, a nonconforming structure may be enlarged without satisfying the public facilities fee and open space requirements of this chapter, provided that:

- (A) The floor area of the proposed construction does not exceed twenty-five per cent of the floor area of the structure as it legally existed on October 10, 1998, or floor area of the structure at the time of application for a development permit excluding proposed demolitions, whichever is less;
- (B) The proposed construction does not encroach into a required yard, except that roof overhangs, eaves, sunshades, sills, frames, beam ends, projecting courses, planters, or awnings are allowed if they do not extend more than four feet from the existing structure. However, in no event shall roof overhangs, eaves, sunshades, sills, frames, beam ends, projecting courses, or planters be closer than five feet

- from the property line; and awnings may extend over the property line above public property pursuant to the provisions of paragraph (6);
- (C) The total floor area of the existing structure and the expansion do not exceed 1.5 FAR;
 - (D) The proposed construction does not exceed forty-five feet in height;
 - (E) The proposed construction does not adversely affect neighboring properties;
 - (F) The parking requirements of this chapter are satisfied for the area proposed to be constructed; and
 - (G) The area created by the proposed construction will be utilized for a permitted use;
- (3) Any provision of these rules to the contrary notwithstanding, if a nonconforming structure is proposed to be partially acquired as part of an improvement district or other public project, the remainder of the structure may be demolished and the equivalent floor area reconstructed on the lot without satisfying the public facilities fee and open space requirements of this chapter, provided that the executive director shall find that the proposed reconstruction will be utilized for a permitted use, is practically and aesthetically superior to that which would otherwise result if the partially acquired structure was refaced at the new property line, and does not substantially increase nonconformity. Any additional floor area created by the proposed reconstruction shall be subject to the applicable requirements of this chapter;
- (4) 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 these rules.

Except as otherwise provided herein, no nonconforming structure that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the provisions of this chapter;

- (5) If a nonconforming structure is moved for any reason, it shall thereafter conform to the applicable rules of this chapter after it is moved;
- (6) Any awning may extend from a nonconforming structure over public property, provided approvals from the appropriate governmental agencies are secured and the awning does not extend more than four feet from the face of the building to which it is attached; and
- (7) Upon satisfaction of the zoning adjustment provision set forth in section 15-23-21, walls and fences may project into or enclose any part of any front yard provided that the wall or fence does not exceed a height of six feet and front yard nonconformities already exist on the development lot.

(g) The following requirements apply to nonconforming lot:

- (1) A nonconforming lot shall not be reduced in area, width, or depth, except because of a government project that is intended to further the public health, safety, or welfare or the intent of the makai area plan;
- (2) Any conforming structure or use may be constructed, enlarged, extended, or moved on a nonconforming lot as long as all other requirements of this chapter are complied with.

(h) Nonconforming parking and loading may be continued, subject to the following provisions:

- (1) If there is a change in use which has a greater parking or loading requirement than the former use, additional parking and loading shall be required and shall not be less than the difference between the requirements for the former use and the proposed use; and
- (2) Off-street parking and loading requirements of this chapter shall be satisfied for additional floor area constructed. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005]
(Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

§15-23-16 Application fees. (a) Applications for which a public hearing is required shall be accompanied by an application fee. The application fee shall consist of the following:

- (1) A nonrefundable processing fee of \$200 to defray expenses associated with staff review, preparation of a report to the authority, and to conduct the public hearing; and
- (2) A fee for the publication and transmittal of the hearing notice. The cost of the hearing notice shall be refunded only if the public hearing notice has not been submitted to the publishing agency. If a joint hearing is held for more than one permit requiring a public hearing for a single development project, only one public hearing fee shall be charged.

(b) Government agencies shall be exempt from all fees required by this chapter. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-17 Violations. (a) The authority may maintain an action for an injunction to restrain any violation of this chapter or the makai area plan, and may take lawful action to prevent or remedy any violation.

(b) When a violation is found to have occurred the executive director shall require that corrective action be taken and may impose administrative penalties pursuant to subchapter 8 of chapter 15-16. [Eff 2/24/90; am 10/3/94; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-23-18 Amendments. This chapter may be amended pursuant to chapter 91, HRS, as may be necessary. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-19 Severability. (a) If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of these rules shall continue to be separately and fully effective

(b) If a court of competent jurisdiction finds the application of any provision or provisions of this chapter to any zoning lot, building or other structure, or tract of land to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to the person, property, or situation immediately involved in the controversy, and the application of any such provision to other persons, property, or situations shall not be affected. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth:

HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-20 Interpretation by the executive director. (a) In administering this chapter, the executive director may when deemed necessary render written interpretations to clarify or elaborate upon the meaning of specific provisions of this chapter for intent, clarity and applicability to a particular situation.

(b) A written interpretation shall be signed by the executive director and include the following:

- (1) Identification of the section of this chapter in question;
- (2) A statement of the problem;
- (3) A statement of interpretation; and
- (4) A justification statement.

(c) A written interpretation issued by the executive director shall be the basis for administering and enforcing the pertinent section of this chapter. All written interpretations rendered pursuant to these rules shall be public record, and shall be effective on the date signed by the executive director. [Eff 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-21 Zoning adjustments and waivers. (a) When a development standard contained in this chapter identifies specific circumstances under which a revision is appropriate, an applicant may request an adjustment to the standard. An adjustment request is to be filed with supporting material specifying the requested adjustment and the manner in which the proposed project qualifies for the adjustment. A request for adjustment shall be approved by the executive director upon finding that criteria for the adjustment specified in the standard are satisfied.

(b) The strict application of the development or design standards of this chapter may be waived by the

executive director for public uses and utility installations. The granting of the waiver shall not, under the circumstances and conditions applied in the particular case, adversely affect the health and safety of persons, and shall not be materially detrimental to the public welfare or injurious to nearby property improvements. The burden of proof in showing the reasonableness of the proposed waiver shall be on the applicant seeking the waiver.

[Eff 10/10/98; comp 2/2/02; comp 12/9/02;
comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5,
206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-22 Automatic approvals. (a) The following development-related permits and approvals shall be deemed approved if no decisions are made granting or denying them within the following review periods:

- (1) Master plan permits: 200 days;
- (2) Development permits: 160 days;
- (3) Certificates of appropriateness: 160 days;
- (4) Conditional use permits for off-site parking or joint use of parking: 160 days;
- (5) Variances: 100 days;
- (6) Modifications: 100 days;
- (7) Certificates of project eligibility: 60 days;
- (8) Conditional use permits for vacant land: 30 days;
- (9) Zoning adjustments and waivers: 30 days; and
- (10) Temporary use permits: 10 days.

(b) The review period shall commence upon submission of a complete application. In the event that no decision is rendered on the application within ten days of the submission of a complete application, the applicant shall be notified of the date for automatic approval.

(c) When a proposed project requires more than one permit or approval or both listed in subsection

(a), the applicant may apply for some or all such approvals concurrently. The review period for concurrent applications shall be based on the permit or approval with the longest review period.

(d) Application filing procedures and preparation guidelines may be provided to assist applicants. [Eff 1/13/00; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-23-23 to 15-23-29 (Reserved)

SUBCHAPTER 2

LAND USE ZONE RULES

§15-23-30 Establishment of land use zones.

Within the makai area, there are hereby established the following land use zones:

- (1) Mixed-use zone (MUZ);
- (2) Waterfront commercial (WC);
- (3) Mixed-use zone industrial (MUZ-I);
- (4) Park (P); and
- (5) Public use areas (PU).

The boundaries for each zone are set forth in Exhibit 2 entitled "Land Use Zones"; dated September 2005, and attached at the end of this chapter. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §206E-7) (Imp: HRS §206E-7)

§15-23-31 MUZ zone: purpose and intent. The mixed-use zone (MUZ) established by this chapter is designed to promote and protect the public health, safety, and general welfare. These general goals include, among others, the following specific purposes:

- (1) To provide a subdistrict whereby a variety of residential and commercial uses may coexist compatibly within the same area. The emphasis within this zone shall be to develop a mixed-use multi-storied area which will provide housing, jobs, and other employment opportunities. In addition, the area will support a variety of appropriate community facilities for residents and workers;
- (2) To create a truly vibrant living and working environment by regulating the density and bulk of buildings in relation to the land around them and to one another, by requiring the provision of open space and encouraging the development of job opportunities;
- (3) To provide freedom of architectural design, in order to encourage the development of more attractive and economic building forms; and
- (4) To promote the most desirable use of land and direction of building development in accord with a well-considered plan, to promote stability of residential and commercial development, to protect the character of the district and its peculiar suitability for particular uses, and to conserve the value of land and buildings. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]

§15-23-32 MUZ zone: use rules. Within the mixed-use zone (MUZ), the following uses and structures shall be permitted:

- (1) Commercial uses:
 - (A) Shopping center complexes;
 - (B) Food markets, stores, delicatessens, bakeries;

- (C) Drug stores;
- (D) Liquor stores;
- (E) General merchandise;
- (F) Apparel and accessories;
- (G) Eating or drinking establishments;
- (H) Hardware stores;
- (I) Furniture, home furnishing, and equipment;
- (J) Stationery stores;
- (K) Variety stores;
- (L) Personal service establishments, including: barber shops, beauty shops, shoe repair shops, dry cleaning, dyeing, laundry, pressing, dressmaking, tailoring, and garment repair shops;
- (M) Business, vocational, and language schools;
- (N) Banks and financial institutions, insurance, and real estate offices;
- (O) Greenhouses and plant nurseries;
- (P) Private clubs, lodges, social centers, eleemosynary establishments, and athletic clubs;
- (Q) Theaters, museums, art galleries, libraries, historical sites;
- (R) Repair services for radio, television, bicycles, business machines and household appliances, other than those with internal combustion engines;
- (S) Commercial condominiums;
- (T) Commercial entertainment and recreation facilities (indoor and outdoor);
- (U) Radio and television studios and other communication uses, excluding towers;
- (V) Medical and health services;
- (W) Legal, engineering, accounting, and other professional services;
- (X) Offices, professional clinics, studios, medical and research laboratories;
- (Y) Retail establishments, including incidental manufacturing of goods for sale only at retail on the premises;

- (Z) Motor vehicle and vehicle accessory establishments (sales, rentals, and service);
 - (AA) Miscellaneous retail trade store;
 - (BB) Miscellaneous business services, including: watch, clock, and jewelry repair; typewriter repair; armature rewinding; general fix-it shop; advertising firm; employment agency; services to dwellings (window cleaning, insect exterminating); and management areas;
 - (CC) Governmental services administrative;
 - (DD) Military recruiting stations;
 - (EE) Outdoor private land recreation (operated for profit);
 - (FF) Travel agencies;
 - (GG) Parking garages (enclosed);
 - (HH) Laundry, laundry and cleaning service, (includes self-service laundry);
 - (II) Radio/TV broadcasting, excluding towers;
 - (JJ) Motion picture recording and sound studios;
 - (KK) Miscellaneous business services, including duplicating, blueprinting, linen supply, services to dwellings, typewriter repair, armature rewinding, and general fix-it shop; and
 - (LL) Personal services establishments, including: shoe repair shops, dry cleaning, dyeing, pressing, dressmaking, tailoring, and garment repair shops.
- (2) Residential uses: Multi-family dwellings, including apartments, assisted living facilities, public housing, condominiums, dormitories, rooming houses, townhouses, townhouse condominium and model units.
 - (3) Community service uses:
 - (A) Nursing clinics and convalescent homes, and nursing facilities, assisted living

- administration, or ancillary assisted living amenities for the elderly and people with disabilities;
- (B) Child care, day care, and senior citizen centers;
 - (C) Nursery schools and kindergartens;
 - (D) Churches;
 - (E) Charitable institutions and nonprofit organizations;
 - (F) Public uses, including: public safety facilities; post offices; hospitals; miscellaneous health and medical facilities; educational institutions; cultural centers/ libraries; religious institutions; public school/park complexes; outdoor public land recreation; indoor public recreation; personal development centers; and utility substations, provided that utility substations other than individual transformers shall be surrounded by a wall, solid except for entrances and exits, or by a fence with a screening hedge six feet in height; provided also that transformer vaults for underground utilities and like uses shall require only a landscape screening hedge, solid except for access opening; and
 - (G) Consulates.
- (4) Uses and structures which are customarily accessory and clearly incidental and subordinate to the principal uses and structures. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-33 WC zone: purpose and intent. The waterfront commercial zone (WC) established by this

chapter is designed to promote and protect the public health, safety, and general welfare. These general goals include, among others, the following specific purposes:

- (1) To promote an environment where residential and retail commercial uses will coexist compatibly alongside maritime uses; and
- (2) To promote the most desirable use of land and adjacent water uses in accordance with a well-considered plan, to promote stability of surrounding land uses, to protect the character of the district and its peculiar suitability for particular uses, and to conserve the value of land and buildings. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §206E-4, 206E-5, 206E-7)

§15-23-34 WC zone: use rules. Within the waterfront commercial zone (WC), the following uses and structures shall be permitted:

- (1) Commercial uses:
 - (A) Food markets, stores, delicatessens, bakeries;
 - (B) Drug stores;
 - (C) Liquor stores;
 - (D) General merchandise;
 - (E) Apparel and accessories;
 - (F) Eating and drinking establishments;
 - (G) Furniture, home furnishing, and equipment;
 - (H) Variety stores;
 - (I) Passenger transportation terminals;
 - (J) Theaters, museums, art galleries, libraries, and historical sites;
 - (K) Commercial recreation and entertainment facilities; and
 - (L) Offices, professional offices, travel agencies, and other office uses.

- (2) Residential uses: Multi-family dwellings, including apartments, assisted living facilities, public housing, condominiums, dormitories, rooming houses, townhouses, townhouse condominium and model units.
- (3) Maritime uses:
 - (A) Fish and seafood wholesaling and retailing;
 - (B) Aquariums and museums;
 - (C) Piers, wharves, and docks;
 - (D) Terminals for passengers arriving or departing by ship ferry or watertaxi; and
 - (E) Sales offices for commercial maritime operations.
- (4) Uses and structures which are customarily accessory and clearly incidental and subordinate to the principal uses and structures. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-35 REPEALED. [R 10/10/98]

§15-23-36 REPEALED. [R 10/10/98]

§15-23-37 MUZ-I zone: purpose and intent. The purpose of the mixed-use zone industrial (MUZ-I) established by this chapter is designed to promote and protect the public health, safety, and general welfare. These general goals include, among others, the following specific purposes:

- (1) To provide a subdistrict whereby a variety of waterfront industrial and commercial uses may coexist compatibly within the same area. The emphasis within this zone shall be to develop a predominantly waterfront

industrial area which will provide jobs and other employment opportunities. In addition, the area will support a variety of appropriate commercial and community facilities for workers;

- (2) To ensure that harbor-related industrial activities that are vital to the performance of the port functions at Piers 1 and 2 are continued and facilitated; and
- (3) To promote the most desirable use of land and direction of building development in accord with a well-considered plan, to promote stability of industrial and commercial development, to protect the character of the district and its peculiar suitability for particular uses, and to conserve the value of land and buildings.
[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-38 MUZ-I zone: use rules. Within the mixed-use zone industrial (MUZ-I), the following uses and structures shall be permitted:

- (1) Waterfront industrial uses:
 - (A) Piers, wharves and docks;
 - (B) Terminals for passengers arriving or departing by ship ferry or watertaxi;
 - (C) Sales offices for commercial maritime operations;
 - (D) Boating and fishing services and supplies;
 - (E) Fish and seafood wholesaling;
 - (F) Utilities installations; and
 - (G) Maritime fuel operations.
- (2) Commercial uses:
 - (A) Food markets, stores, delicatessens, bakeries;
 - (B) Drug stores;
 - (C) Liquor stores;

- (D) General merchandise;
 - (E) Apparel and accessories;
 - (F) Eating and drinking establishments;
 - (G) Furniture, home furnishing, and equipment;
 - (H) Variety stores;
 - (I) Passenger transportation terminals;
 - (J) Theaters, museums, art galleries, libraries, and historical sites;
 - (K) Commercial recreation and entertainment facilities; and
 - (L) Offices; professional offices, travel agencies, and other office uses.
- (3) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-39 MUZ-I zone: development standards.

The following shall apply to waterfront industrial uses within the MUZ-I zone:

- (1) On-site open space shall not be required;
- (2) One off-street parking space for every two employees or one space per one thousand square feet of floor area, whichever is greater, shall be required; and
- (3) Public facilities fees shall not be required. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-40 Park areas. Within areas designated "Park" (P), the following uses shall be permitted:

- (1) Amphitheaters;

- (2) Performing arts centers;
- (3) Museums, art galleries and workshops;
- (4) Aquariums and [marine] research facilities;
- (5) Active and passive recreation;
- (6) Gardens, greenhouses;
- (7) Parking;
- (8) Exploratoriums; and
- (9) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures. The authority may allow other uses, provided that such other uses shall further the purpose and intent of this chapter and the makai area plan.

In circumstances where there may be uncertainty about applicable provisions, the executive director shall determine which land use zone provisions apply. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-41 Public areas. Within areas designated "Public" (PU), the provisions applicable to the adjacent land use zone shall apply. In addition, the following uses shall be permitted:

- (1) Utility substations;
- (2) Museums; and
- (3) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures.

In circumstances where there may be uncertainty about applicable provisions, the executive director shall determine which land use zone provisions apply. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-42 Minimum lot area, width and depth.
 Subdivision of any parcel within any land use zone shall result in a lot area of no less than ten thousand square feet and a lot width and depth of no less than sixty feet, provided no minimum subdivided lot area, width and depth shall apply to permanent off-site parking facilities, street and utility improvement projects, and public utility lots or easements used solely for utility facilities such as transformers, switch vault substations, and pumping stations. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-43 Subdivision and consolidation. The subdivision or consolidation of land within any land use zone shall be processed and approved by the city and county of Honolulu. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-23-44 to 15-23-59 (Reserved)

§15-23-60 Additional development requirements.
 In addition to the requirements of the respective land use zones specified in this subchapter, the development requirements of subchapter 3 relating to any development, irrespective of the land use zone in which it is located, shall be applicable unless specifically provided otherwise. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5; 206E-7)

SUBCHAPTER 3

GENERAL DEVELOPMENT REQUIREMENTS

§15-23-61 Purpose and intent. The purpose of this subchapter is to set forth standards relating to development which are generally applicable to any use or site, irrespective of the land use zone in which it is located. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-62 Density. The maximum floor area ratio (FAR) for any development lot within any land use zone shall be as set forth in Exhibit 3, entitled "Maximum Height and Density Plan", dated September 2005, and attached at the end of this chapter. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-63 Heights. (a) No portion of any building or other structure located within any land use zone shall exceed the height set forth in Exhibit 3, entitled "Maximum Height and Density Plan", dated September 2005, and attached at the end of this chapter.

(b) The height of any structure shall be measured from ground elevation, except where finish grade is higher than ground elevation in order to meet city construction standards for driveways, roadways, drainage, sewerage and other infrastructure requirements.

(c) The following building elements or features and associated screening shall be exempt from height limits subject to the following restrictions:

- (1) Necessary utilitarian features including:
stairwell enclosures, safety railings,

ventilators, and skylights; decorative or recreational features, including rooftop gardens, planter boxes, flag poles, spires, parapet walls or ornamental cornices; roof-mounted mast, whip and dish antennae; and energy-saving devices, including heat pumps and solar collectors, may exceed the height limit by not more than twelve feet; and

- (2) Vent pipes, fans, roof access stairwells, and structures housing rooftop machinery, such as elevators and air-conditioning, and chimneys, may exceed the height limit by not more than eighteen feet.

(d) Miscellaneous building elements may exceed the height limit subject to the zoning adjustment process specified in section 15-23-21.

(e) Auditoriums, amphitheatres, and performing arts centers may exceed the height limit as approved by the executive director.

(f) Rooftop features which principally house elevator machinery and air-conditioning equipment may extend above the governing height limit for structures subject to the zoning adjustment provision set forth in section 15-23-21 and the following conditions:

- (1) If the elevator cab opens on the roof, machinery may not be placed above the elevator housing;
- (2) The highest point of the roofing treatment shall not exceed five feet above the highest point of equipment structures; and
- (3) Areas proposed to be covered by the rooftop feature will not be counted as floor area, provided they are used only for the housing of rooftop machinery. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp NOV 03 2005]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-64 Yards. (a) Every yard bounded by a street shall be a front yard. A minimum front yard of

fifteen feet in depth shall be required for each development lot. The minimum front yard may be waived if commercial use is provided at grade that enhances the pedestrian environment. Notwithstanding the foregoing, the block bounded by Ala Moana Boulevard, Cooke, Ilalo, and Coral Streets shall have a minimum front yard of thirty feet in depth on its Cooke Street boundary and no front yard shall be required on its Coral Street boundary.

(b) The minimum side and rear yard requirements shall be as follows:

- (1) For structures without windows or openings facing side or rear property lines, no side or rear yard shall be required;
- (2) For structures containing windows or openings facing side or rear property lines, the minimum side yard shall be ten feet, and the minimum rear yard shall be ten feet; and
- (3) Parking spaces may extend to side and rear property lines through the zoning adjustment process specified in section 15-23-21, subject to the following conditions:

(A) An area or areas of required yards equivalent to the area to be used for parking or accessory use structures is provided elsewhere on the zoning lot. This equivalent area shall be maintained in landscaping, except for drives or walkways necessary for access to adjacent streets. Parking may overhang yard areas up to three feet if wheel stops are installed. A minimum of fifty per cent of the equivalent area shall be contiguous to the street frontage abutting the zoning lot.

(B) Any parking floor situated within ten feet of the property line shall not be more than four feet above existing grade.

(c) Yard widths shall be measured perpendicular to lot lines, except that front yards shall be measured perpendicular to the street right-of-way or

the established street setback line, whichever is the greater distance from the street center line.

(d) All required yards shall be landscaped pursuant to section 15-23-142.

(e) No business or structure shall be carried on or located within any required yard except as follows:

- (1) Up to fifty per cent of the lot frontage may be used for outdoor dining areas, provided they are covered with umbrellas, awnings, or trellises, and remain open on the sides during business hours;
- (2) Dispensers for newspaper sales and distribution are permitted;
- (3) Porte cocheres and pergolas may be allowed with approval of the executive director; and
- (4) Bicycle parking, including a fixed bicycle rack for parking and locking bicycles.

(f) Roof overhangs, eaves, sunshades, sills, frames, beam ends, projecting courses, planters, awnings, and other architectural embellishments or appendages, and minor mechanical apparatus with less than a thirty-inch vertical thickness may project into the required yards no more than five feet.

(g) Retaining walls within required yards shall not exceed a height of three feet. A safety railing, not capable of retaining earth or exceeding forty-two inches may be erected on top of the retaining wall. The executive director may allow modification of the maximum height based on safety or topography. Walls and fences may project into or enclose any part of any yard, except required front yards, provided that the fence or wall shall not exceed a height of six feet.

(h) Parking and loading including related maneuvering area or aisle shall not be allowed in any required yard or street setback area, except that parking spaces may overlap required front yards by three feet if wheel stops are installed. [Eff

2/24/90; am and comp 10/10/98; am 1/13/00; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005]
 (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-65 Open space. (a) Open space is that portion of a development lot, exclusive of required yards, setback areas, or parking areas, which is:

- (1) Open and unobstructed overhead;
- (2) Landscaped or maintained as a recreational or social facility;
- (3) Not to be used for driveways, loading purposes, or storage, or for the parking of vehicles; and
- (4) Visible and open to the public during normal business hours.

(b) Berms, landforms, or underground structures covered with landscape treatment including artificial turf, shall be considered as part of the required open space, provided that open space shall not exceed four feet from the sidewalk elevation.

(c) For any development lot within any land use zone, except lands entirely devoted to waterfront industrial uses in the MUZ-I zone:

- (1) The minimum amount of open space shall be the lower of:
 - (A) Twenty per cent of the development lot area; or
 - (B) Thirty per cent of the development lot area less required yard areas;
- (2) The minimum required open space may include both of the following:
 - (A) Up to twenty-five per cent of an adjacent front yard provided that:
 - (i) At least one-half of the open space is entirely in one location and proportioned to a maximum length-to-width of 2:1; and
 - (ii) One linear foot of seating is provided for each thirty square feet of open space;
 - (B) Up to twenty-five per cent of any passageways or arcades.

(d) Open space requirements for developments on lots of 40,000 square feet or less shall be according to the following table. For lot areas between 10,000

and 40,000 square feet, the minimum open space is proportional to the parameters of the lots enumerated in the following table:

<u>Lot Area</u> (square feet)	<u>Minimum Open Space</u> (Per cent of lot area)
40,000	20
20,000	10
10,000 or less	0

[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 0 3 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-66 REPEALED. [R 10/10/98]

§15-23-67 Building envelopes. Building envelopes for developments shall conform with requirements set forth in Exhibit 4, entitled "Maximum Building Envelope", dated September 2005, attached at the end of this chapter. Towers shall generally be oriented with the long axis in the mauka-makai direction. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp NOV 0 3 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-68 Off-street parking. (a) Except as otherwise provided in this chapter, the minimum number of required off-street parking spaces for development lots within any land use zone shall be as specified in the following table:

OFF-STREET PARKING REQUIREMENTS

<u>Use</u>	<u>Requirement</u>
Auditoriums	One per three hundred square feet of assembly area or one per ten fixed seats, whichever is greater.
Churches and theaters	One per every five fixed seats or fifty square feet of general assembly area, whichever is greater.
Commercial and all other uses	One per four hundred square feet of floor area.
Daycare facilities	One per ten enrollment capacity.
Eating and drinking establishments	One per three hundred square feet of eating and drinking area, plus one per four hundred square feet of kitchen or other area.
Multi-family dwellings (including reserved housing units):	
600 sq. ft. or less	0.9 per unit
More than 600 but less than 800 sq.ft.	1.13 per unit
800 sq.ft. and over	1.35 per unit

<p>Nursing clinics and convalescent homes, and special-care homes for the elderly and people with disabilities</p>	<p>0.9 per four patient beds, dwelling units, or lodging units.</p>
<p>Schools: language, vocational, business, technical and trade, colleges or universities</p>	<p>One for each ten students of design capacity, plus one per four hundred square feet of office floor area.</p>
<p>Waterfront industrial uses</p>	<p>One per one thousand square feet of floor area or one on-site space per every two employees, whichever is greater. On-site parking areas within this zone are not required to be enclosed.</p>

(b) The following are to be used in determining the required number of off-street parking spaces:

- (1) Where a proposed use is applicable to more than one use listed in the table in subsection (a), or where there may otherwise be uncertainty as to the off-street parking requirement for a proposed use, the executive director will review the proposed use and determine its equivalent and applicable off-street parking requirement;
- (2) When computation of required parking spaces results in a fractional number, the number of spaces required shall be the nearest whole number;
- (3) In churches and other places of assembly in which patrons or spectators occupy benches, pews, or other similar seating facilities each twenty-four inches of width shall be

counted as a seat for the purpose of determining requirements for off-street parking;

- (4) All required parking spaces shall be standard-sized parking spaces; and
- (5) When a building or premise includes uses incidental or accessory to a principal use, the total number of spaces required shall be determined on the basis of the parking requirements of the principal use or uses, except that if the accessory use creates a larger parking demand than the principal use, the number of required parking spaces shall be determined on the basis of the parking requirement for each respective use.

(c) The following are general standards for parking lots or areas:

- (1) All parking and drive areas shall be provided and maintained with an all-weather surface, except as otherwise provided in this chapter;
- (2) Parking areas, if illuminated, shall be illuminated in such a manner that all light sources are shielded from the direct view of adjacent lots;
- (3) Ingress and egress aisles shall be provided to a street and between parking bays, and no driveway leading into a parking area shall be less than twelve feet in width. In addition, minimum aisle widths for parking bays, except mechanical parking areas, shall be provided in accordance with the following table:

<u>Parking Angle</u> <u>(in degrees)</u>	<u>Aisle Width</u> <u>(in feet)</u>
0-44	12
45-59	13.5
60-69	18.5
70-79	19.5
80-89	21
90	22

Notwithstanding the foregoing, with a parking angle of ninety degrees, the minimum aisle width may be reduced by one foot for every six inches of additional parking space width above the minimum width of eight feet three inches, to a minimum aisle width of nineteen feet;

- (4) Where four or more parking spaces are required, all parking areas shall be designed or arranged in a manner that no maneuvering into any street, alley, or walkway is necessary in order for a vehicle to enter or leave the parking space, and which allows all vehicles to enter the street in a forward manner;
- (5) Developments may have open or uncovered parking at grade. Developments which provide parking in a structure shall contain a roof or trellis within the allowable height limit and walls on at least three sides. The walls shall be at least forty-two inches high and shall screen parked vehicles. Parking located on a roof shall be allowed subject to the zoning adjustment provision set forth in section 15-23-21, subject to the following conditions:
 - (A) Negative impacts or incompatibilities with adjacent properties shall be mitigated; and
 - (B) Appropriate screening with architectural or landscaping elements shall be provided;
- (6) Grade level open or uncovered parking areas with more than ten spaces shall provide at least eight per cent of the gross parking and driveway area as interior parking area landscaping. Interior parking area landscaping is defined as landscaped areas not counted as open space or required yard setbacks situated between parking stalls. The interior parking area landscaping shall consist of planter areas, each containing

one tree of at least two-inch caliper with ground cover or shrubs at the base dispersed within the parking area. Trees within the planter area shall be limited to shade or flowering trees such as monkeypod, rainbow shower, poinciana, wiliwili, or autographs; and

- (7) For new developments or enlargement of nonconforming structures, parking may be open or uncovered at grade but shall be buffered or screened from any right-of-way by a hedge of at least forty-two inches in height, provided the hedge shall not be required for vehicular sales or rental establishments. The hedge may be located in required yards or open space. Cars shall not be parked so as to protrude into required yards or open space, except as provided by section 15-23-64(b)(3).

(d) The following are general standards for parking spaces:

- (1) All spaces shall be individually marked if more than four spaces are required;
- (2) All spaces shall be unobstructed, provided a building column may extend a maximum total of six inches into the sides of the parking space. A wall is not considered a building column;
- (3) Standard-sized parking spaces shall be at least eighteen feet in length and eight feet three inches in width with parallel spaces at least twenty-two feet in length; and
- (4) All spaces shall be so arranged that any automobile may be moved without moving another, except that tandem parking shall be permissible in instances where the parking spaces are used for employee parking, where all parking is performed by an attendant at all times, or for public assembly facilities and temporary events, including church

services and activities where user arrivals and departures are simultaneous and parking is attendant directed. Tandem parking for employee parking shall be limited to a configuration of two stacked parking stalls and at no time shall the number of parking spaces allocated for employees exceed twenty-five per cent of the total number of required spaces.

(e) Mechanical means of providing parking spaces or access thereto, is permitted provided the following conditions are met:

- (1) Adequate waiting and maneuvering spaces are provided on the lot in order to minimize on-street traffic congestion, subject to the approval of the executive director; and
- (2) All mechanical equipment shall be visually screened by architectural or landscape treatments.

(f) Parking for the physically disabled shall comply with applicable federal, state, and county standards, rules, and regulations for the physically disabled. Public projects shall comply with section 103-50, HRS.

(g) A conditional use permit for joint use or off-site parking facilities described in subsection (h) may be granted by the executive director. Either an owner or a developer, or a lessee holding a recorded lease for the property, the unexpired term of which is more than five years from the date of filing of the application, may qualify for a conditional use permit. Applications shall be accompanied by:

- (1) A plan drawn to scale, showing the actual dimensions and shape of the lot, the sizes and locations on the lot of existing and proposed structures, if any, and the existing and proposed uses of structures, parking and open spaces;
- (2) A plan describing the method and manner in which the proposed use or tenant will fulfill the requirements of subsection (h); and

- (3) Any additional information requested by the executive director relating to topography, access, surrounding land uses, written agreements and other matters as may reasonably be required in the circumstances of the case.

(h) In the event a conditional use is granted for the number of off-street parking spaces required by this chapter, said required parking spaces shall be provided on-site as joint use of parking facilities or in off-site parking facilities.

- (1) Joint use of parking facilities: Joint use of off-street parking facilities may be allowed, provided that:
 - (A). The distance from the entrance of the parking facility to the nearest principal entrance of the establishment or establishments involved in such joint use shall not exceed 1,200 feet by normal pedestrian routes;
 - (B) Parking spaces involved in joint use shall not be set aside exclusively for compact cars, valet parking, or particular user groups or individuals;
 - (C) The amount of off-street parking which may be credited against the requirements for the use or uses involved shall not exceed the number of spaces reasonably anticipated to be available during differing periods of peak demand;
 - (D) A written agreement assuring continued availability of the number of spaces for the uses involved at the periods indicated shall be drawn and executed by the parties involved, and a certified copy shall be filed with the authority. No change in use or new construction shall be permitted which increases the requirements for off-street parking space unless such additional space is provided; and

- (E) The joint use arrangement is logical and practical and will not adversely affect adjacent developments or uses or result in impacts other than which could be reasonably anticipated if standard off-street parking provisions were applied.
- (2) Off-site parking facilities: Off-site parking facilities may be allowed, provided that:
- (A) The distance from the entrance to the parking facility to the nearest principal entrance of the establishment or establishments involved shall not exceed 1,200 feet by normal pedestrian routes;
 - (B) A written agreement assuring continued availability of the number of spaces indicated shall be drawn and executed, and a certified copy shall be filed with the authority. The agreement shall generally provide that if the amount of parking spaces is not maintained, or space acceptable to the executive director substituted, the use, or such portion of the use as is deficient in number of parking spaces, shall be discontinued. No change in use or new construction shall be permitted which increases the requirements for off-street parking unless such additional space is provided; and
 - (C) The off-site parking arrangement is logical and practical and will not adversely affect adjacent developments or uses or result in impacts other than which could be reasonably anticipated if standard off-street parking provisions were applied.
- (i) Changes in use that would otherwise require the addition of no more than three parking spaces may

set forth in section 15-23-21 and the following conditions:

- (1) There are no reasonable means of providing the additional parking spaces which would otherwise be required, including but not limited to joint use of parking facilities and off-site parking facilities; and
- (2) There was no previous grant of an adjustment from parking requirements on the lot pursuant to this subdivision.

(j) An alternative parking requirement may be considered subject to the zoning adjustment process specified in section 15-23-21 and the following conditions:

- (1) A parking demand study shall be provided specifying the alternative parking requirement along with any documentation that supports the proposed adjustment; and
- (2) The parking adjustment is reasonable and will not adversely affect adjacent developments or uses or result in impacts other than which could be reasonably anticipated if standard off-street parking provisions were applied. Eff 2/24/90; am and comp 10/10/98; am 1/13/00; comp 2/2/02; am and comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-69 Off-street loading. (a) Except as otherwise provided in this chapter, the off-street loading requirements herein specified shall apply to all development lots exceeding five thousand square feet based on the class or kind of uses to which the lot is to be placed. In addition, in connection with development permits involving such classes or kinds of uses, special requirements may be imposed.

(b) Any building existing within the makai area on October 10, 1998 and which is subsequently altered to increase floor area shall provide off-street

loading spaces for the area proposed to be constructed as indicated in the following table:

OFF-STREET LOADING REQUIREMENTS

<u>Use or Use Category</u>	<u>Floor Area (in square feet)</u>	<u>Loading Space Requirements</u>
Hospitals or similar institutions or places of public assembly.	5,000 - 10,000	one
	10,001 - 50,000	two
	50,001 - 100,000	three
	Each additional 100,000 over 100,000	one
Multi-family dwellings.	20,000-150,000	one
	150,001-300,000	two
	Each additional 200,000 over 300,000	one
Offices or office buildings, waterfront industrial uses.	20,000 - 50,000	one
	50,001 - 100,000	two
	Each additional 100,000 over 100,000	one
Retail stores, eating and drinking establishments, wholesale operations, business services, personal services, repair, general service.	2,000 - 10,000	one
	10,001 - 20,000	two
	20,001 - 40,000	three
	40,001 - 60,000	four
	Each additional 50,000 over 60,000	one

(c) In the event a building is used for more than one use, and the floor area for each use is below the minimum requiring a loading space, as set forth in the table below, the required loading space or spaces shall be determined by taking the aggregate floor area of the several uses and applying the requirements of the use category requiring the greatest number of loading spaces.

(d) Loading space required under this section shall not be in any street or alley, but shall be provided within the building or on the lot. The following standards shall also apply to loading spaces:

- (1) When only one loading space is required and total floor area is less than 5,000 square feet, the minimum horizontal dimensions of the space shall be eighteen feet by eight feet three inches, and the space shall have a vertical clearance of at least ten feet;
- (2) When more than one loading space is required, the minimum horizontal dimensions of at least half of the required spaces shall be twelve feet by thirty-five feet and have a vertical clearance of at least fourteen feet. The balance of the required spaces shall have horizontal dimensions of at least eighteen feet by eight feet three inches and vertical clearance of at least ten feet;
- (3) Each loading space shall be unobstructed and shall be arranged so that any vehicle may be moved without moving the other;
- (4) Adequate maneuvering areas and access to a street shall be provided and shall have a vertical clearance not less than the applicable height for the loading space;
- (5) All loading spaces and maneuvering areas shall be paved with an all-weather surface;
- (6) Where loading areas are illuminated, all sources of illumination shall be shielded to prevent any direct reflection toward adjacent premises;
- (7) Loading spaces for three or more vehicles shall be arranged so that no maneuvering to

enter or leave a loading space shall be on any public street, alley, or walkway;

- (8) Each required loading space shall be identified as such and shall be reserved for loading purposes;
- (9) No loading space shall occupy required off-street parking spaces or restrict access; and
- (10) No loading space or maneuvering area shall be located within a required yard.

(e) An adjustment of up to fifty per cent of the required number of loading spaces may be allowed when the loading spaces are assigned to serve two or more uses of a single development project jointly, provided that:

- (1) Each use has access to the loading zone without crossing any street or public sidewalk; and
- (2) The amount of loading spaces which may be credited against the requirements for the use or uses involved shall not exceed the number of spaces reasonably expected to be available during differing periods of peak demand. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-70 Signs. Sign permits shall be processed by the city and county of Honolulu. Except as otherwise provided, signs shall conform to the "B-2 Community Business District" sign regulations of the land use ordinance. The city and county of Honolulu shall be responsible for enforcement of the ordinance's provisions, and shall also administer appeals and variances relating to signs. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-71 REPEALED. [R 10/10/98]

§15-23-72 Circulation. (a) The approval of the executive director or authority shall be required on any addition, deletion, modification or alteration of existing streets shown on the district plan. The executive director or authority may consult with other appropriate governmental agencies prior to said approval.

(b) Public or private mid-block pedestrian or bicycle circulation paths may be required where appropriate in conjunction with development projects. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-73 Public facilities fee. (a) This section shall apply to any development within the makai area that increases an existing development's floor area by more than twenty-five per cent as compared to the development's floor area existing within the makai area on October 10, 1998, or at the time of application for a development permit, excluding proposed demolitions, whichever is less. All new floor area of a development subject to this section shall pay a public facilities fee.

(b) As a condition precedent to the issuance of a development permit, the developer shall agree to payment of a fee for public facilities for the joint use by the occupants and employees of the development as well as by the public. The public facilities fee shall be established at a sum equal to the fair market value of land for the following respective land uses:

- (1) Three per cent of the total commercial and community service floor area of the development to be constructed exclusive of nursing facilities, assisted living administration, and ancillary assisted living amenities; and

- (2) Four per cent of the total residential floor area of the development to be constructed exclusive of floor area devoted to reserved housing units and their associated common areas in proportion with the floor area of other uses.
- (c) Valuation of land shall be determined as follows:
- (1) Valuation shall be based upon the fair market value of the land prior to its development; and
 - (2) In the event that a fair market value cannot be agreed on, the value shall be fixed and established by majority vote of three land appraisers; one shall be appointed by the developer, one appointed by the executive director in the case of base zone development or the authority in the case of planned development, and the third appointed by the first two appraisers. All appraisers shall have had a minimum of five years of training and experience in real estate appraisal work. The developer shall be responsible for one-half of the appraisal fees and costs.
- (d) This section shall not apply to any development or to that portion of a development undertaken by an eleemosynary organization for its own use, or to any development for public uses and structures or for a public improvement or any public project.
- (e) The fee shall be payable prior to the issuance of the initial certificate of occupancy and secured by the applicant with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other acceptable means prior to the issuance of the initial building permit. Calculation of the fee shall be fixed in the development permit and may only be adjusted for revisions in floor area that is approved through an amendment of the development permit.

(f) Payment of fees shall be made to the authority for deposit in a revolving fund to be created and established by the authority. The authority may expend the moneys in the fund for the purchase, creation, expansion, or improvement of public facilities within the district. The authority may transfer any portion of those funds to the city and county of Honolulu for public facilities purposes within the Kakaako district.

(g) Nothing contained in this subchapter shall preclude the creation of any improvement district for public facilities, or the imposition of assessments against properties specially benefited within the district. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005]
(Auth: HRS §§206E-7, 206E-12) (Imp: HRS §§206E-7, 206E-12)

§15-23-74 Prohibition of structures within a mapped street. (a) As used in this section, "mapped street" means a highway, road or street designated in the makai area plan as an existing or future road, street, or highway right-of-way.

(b) No building or structure shall be erected within the area of any mapped street or its required setback area, except upper-level pedestrianways approved by the authority and awnings which may be allowed to project from nonconforming structures over public property pursuant to section 15-23-15.

(c) Except as provided in subsection (b) above, if the executive director finds that a building or structure proposed to be erected will be within the boundaries of any mapped street, the development permit shall be denied and the owner or applicant for the permit shall be notified of the reason for the denial. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; comp NOV 03 2005]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-75 Development of properties within the Aloha tower special district. (a) Properties within the Aloha tower special district as set forth in Exhibit 1, entitled "Makai Area Context Plan", dated September 2005, and attached at the end of this chapter shall be developed so that the resulting development is capable of integration into any overall development plan which may be adopted for the Honolulu waterfront and the development objectives of the Aloha tower development corporation, as identified in section 15-26-38.

(b) Permitted uses within the Aloha tower special district shall be any of the uses which the authority finds compatible with the makai area plan, and capable of integration into any overall development plan which may be adopted for the Honolulu waterfront and the development objectives of the Aloha tower development corporation.

(c) In approving development permits for projects within the Aloha tower special district, the authority may impose on the applicant conditions and requirements that are reasonable and necessary to carry out the intent of any overall development plan which may be adopted for the Honolulu waterfront and the development objectives of the Aloha tower development corporation.

(d) Any provision to the contrary notwithstanding, the authority may waive requirements of these rules or the makai area plan for developments within the Aloha tower special district provided the authority is assured that the waiver will result in an increase of public benefits to the Aloha tower development project. [Eff 2/24/90; am 1/7/91; am and comp 10/10/98; comp 2/2/02; am and comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-76 Utilities required to be underground.

(a) Public utility companies shall place utility lines underground within the district. The location

of all utility structures placed on pads shall be subject to the executive director's approval.

(b) The requirement in subsection (a) shall not apply to the following types of utility lines and related facilities if the executive director determines that said requirement would create undue hardship:

- (1) Overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location of the building to another location on the same building or to an adjacent building without crossing any street or alley; and
- (2) Electric distribution or transmission system in excess of fifteen kilovolts supported on metal or concrete poles without crossarms.
[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-77 Environmental standards. (a) No building wall shall contain a reflective surface for more than thirty per cent of that wall's surface area.

(b) Every use shall be so operated that it does not emit an obnoxious or dangerous degree of odor or fumes.

(c) Any provision in this chapter to the contrary notwithstanding, the rules of the state department of health shall continue to apply to all activities and properties within the makai area. These rules shall include, but not be limited to, department of health, chapter 11-43 relating to community noise control for Oahu, chapter 11-11 relating to sanitation, chapter 11-12 relating to housing, chapter 11-34 relating to poisons, chapter 11-39 relating to air-conditioning and ventilation, chapter 11-42 relating to vehicular noise control, chapter 11-55 relating to water pollution, chapter 11-57 relating to sewage treatment private wastewater

treatment works, chapter 11-58 relating to solid waste management control, chapter 11-59 relating to ambient air quality standards, and chapter 11-60 relating to air pollution. [Eff 2/24/90; am and comp 10/10/98; am 1/13/00; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-78 Temporary uses. Temporary structures, such as tents and booths, may be permitted in any zone for periods not exceeding fourteen days, provided that for good reasons, the executive director may grant extensions for an additional fourteen days. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-79 Conditional use of vacant land. The executive director may allow a conditional use of vacant land, provided:

- (1) The proposed use is any use permitted within the land use zone except:
 - (A) That open or uncovered temporary parking at grade may be permitted in all land use zones; and
 - (B) Construction sites, special trade construction and storage yards, and nonextensive yard uses may be permitted in all land use zones where a six-foot screening wall or fence is erected along all public rights-of-way;
- (2) The duration of the use is for a two-year period, provided that the executive director may issue extensions of up to two years if the development status of the area has not changed appreciably since the use was initially allowed;
- (3) The floor area of any proposed temporary structure does not exceed 0.5 floor area ratio;

- (4) The development conforms to the setback and landscape requirements of this chapter, except for development lots where a screening wall or fence not exceeding six feet in height is erected along all public rights-of-way;
- (5) The development conforms to the performance standards of this chapter;
- (6) In addition to the design controls listed in this section, the executive director may include additional conditions in the permit to ensure that the development does not adversely affect adjacent property and the appearance of the district. Conditional use of vacant land permits already issued under this section may be modified by the executive director at any time in response to valid public concern/complaint, to contain additional conditions for mitigation; and
- (7) The proposed uses in no way prevents or delays the future development of the property. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-80 Joint development of two or more adjacent zoning lots. (a) Whenever two or more lots are developed in accordance with the provisions of this section, they shall be considered and treated as one "development lot" for purposes of this chapter. The maximum building height and density shall be calculated on the basis of the combined land area of all lots being included in the joint development project. Should joint development involve mauka area and makai area lots, floor area and uses permissible in the mauka area shall not be transferred to the makai area.

(b) Owners, duly authorized agents of the owners, or duly authorized lessees, holding leases with a minimum of thirty years remaining in their terms, of adjacent lots, or lots directly facing each other but separated by a street, may apply for permission to undertake such a joint development to the authority or to the executive director, as the case may be.

(c) In applying for such permission, the landowners, duly authorized agents of the owners, or lessees shall submit an agreement which binds themselves and their successors in title, or lease individually and collectively, to maintain the pattern of development proposed in such a way that there will be conformity with applicable zoning rules. The right to enforce the agreement shall also be granted to the authority or executive director, as the case may be. The agreement shall be subject to the approval of the authority or executive director, as the case may be.

(d) If it is found that the area involved is compact, regular or logical, and that the proposed agreement assures future protection of the public interest and is consistent with the intent of the makai area plan, the request may be approved. Upon approval, the agreement, which shall be part of the conditions of development, shall be filed as a covenant running with the land with the bureau of conveyances or the assistant registrar of the land court. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-81 Flood hazard district. The applicable provisions of Article 7 of the land use ordinance relating to flood hazard districts shall apply to all affected activities and properties within the Kakaako district. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-82 REPEALED. [R 10/10/98]

§15-23-83 Applications. (a) Prior to submitting an application for a development permit, potential applicants may be required to have their projects reviewed by the executive director pursuant to section 15-23-10. The review shall be completed prior to applying for a development permit.

(b) A developer shall submit to the authority four copies of a project plan as a part of the application for the development permit. The project plan shall satisfy the stated purposes of the permit applied for.

(c) The project plan shall clearly indicate how the proposed development would satisfy the standards and purposes of this subchapter and the makai area plan. In addition to any other information which the applicant may deem necessary to support the application, the project plan shall include the following:

- (1) Location map showing the project in relation to the surrounding area;
- (2) Site plan showing:
 - (A) Property lines and easements with dimensions and area;
 - (B) The proposed building location, elevations, dimensions, sections, and floor plan and site sections to clearly define the character of the project;
 - (C) Location, elevations, and dimensions of existing buildings;
 - (D) Topographic information showing existing features and conditions and proposed grading; and
 - (E) Location and dimensions of existing and proposed easements, conduits, and rights-of-way;
- (3) A land use plan showing:
 - (A) The locations and uses of all buildings and structures, the general bulk and height of all buildings and their

- relationship to each other and to adjacent areas, the gross floor areas of buildings by type of uses, the ground coverage of all buildings, and the FAR of the project;
- (B) The locations and size of vehicular and pedestrian circulation systems (both exterior and interior), identification of public and private areas and their dimensions, the location and dimensions of off-street loading areas and the location of points of access to the site and to public transportation facilities;
 - (C) The locations and dimensions of parking areas, with calculations of the number of parking spaces;
 - (D) The location of land which is intended for common quasi-public, or amenity use but not proposed to be in public ownership, and proposed restrictions, agreements or other documents indicating the manner in which it will be held, owned, and maintained in perpetuity for the indicated purposes
 - (E) Landscaping plan; and
 - (F) Location and amount of all open space areas;
- (4) A detailed statement describing the manner in which the development would conform to the makai area plan and the purposes and standards of this chapter;
 - (5) A development program stating the sequence in which all structures, open and amenity spaces, and vehicular and pedestrian circulation systems are to be developed;
 - (6) The relationship, if any, of the development program to the authority's and city and county of Honolulu's capital improvements program;
 - (7) Traffic analysis;

- (8) If the project area is currently occupied by business uses, a relocation analysis shall be submitted including the following:
 - (A) A list of current residents and businesses, compiled by addresses or other locational description;
 - (B) Identification of property managers;
 - (C) The terms of the leases, including lease periods, lease rents, and expiration dates of leases; and
 - (D) The net floor area of each business, descriptions of the business activity, and special relocation needs, if any;
- (9) The applicant will certify that all tenants will be notified via certified mail of the effective date of lease termination at least sixty days before eviction; and
- (10) Any additional information which the executive director may request.
 - (d) The completed application shall be filed with the authority. Decisions for applications shall be made as follows:
 - (1) For a development not requiring a variance or modification, the authority, in the case of a development with an FAR in excess of 1.5, or the executive director in the case of a development with an FAR up to 1.5, shall within one hundred days of receipt of the completed application:
 - (A) Approve the application as submitted;
 - (B) Approve the application with adjustments or conditions; or
 - (C) Deny the application with reasons for denial.
 - (2) For a development requiring a variance or modification, the authority shall within sixty days of the order approving or disapproving the variance or modification:
 - (A) Approve the application as submitted;
 - (B) Approve the application with adjustments or conditions; or

(C) Deny application with reasons for denial.

The decision shall be made in writing and sent to the applicant.

(e) If a permit required by this chapter requires a public hearing, no request for postponement of the hearing shall be allowed after notice has been published; however, the applicant may withdraw the permit application. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-84 Determination by authority or executive director. In reaching its determination on an application for a development permit, the authority or executive director, as the case may be, shall consider the following:

- (1) The nature of the proposed site and development, including its size and shape, and the proposed size, shape, and height, arrangement and design of structures;
- (2) Whether the open spaces
 - (A) Are of such size and location as to serve as convenient areas for recreation, relaxation, and social activities for the patrons of the development; and
 - (B) Are so planned, designed, and situated as to function as necessary physical and aesthetic open areas among and between individual structures and groups of structures;
- (3) Whether the setbacks, yards, pedestrianways, bikeways, and related walkways are so located and of sufficient dimensions to provide for adequate light, air, pedestrian circulation, and necessary vehicular access;
- (4) Whether the vehicular circulation system, including access and off-street parking and loading, is so designed as to provide an

- efficient, safe, and convenient transportation system;
- (5) Whether the pedestrian circulation system:
 - (A) Is so located, designed, and of sufficient size as to conveniently handle pedestrian traffic efficiently and without congestion;
 - (B) Is separated, if necessary, from vehicular roadways so as to be safe, pleasing, and efficient for movement of pedestrians; and
 - (C) Provides efficient, convenient, and adequate linkages among open spaces, commercial and employment areas, and public facilities;
 - (6) The adequacy of landscaping, screening, parking, and loading areas, service areas, lighting and signs, with relation to the type of use and neighborhood;
 - (7) The appropriateness of the proposed mixtures of uses;
 - (8) The staging program and schedule of development;
 - (9) Relationship between structures and operations within structures;
 - (10) Whether views will be preserved or blocked;
 - (11) Surface treatment;
 - (12) Overall appearance of a development from the street and adjacent developments;
 - (13) Whether structures have an appropriate orientation to take advantage of winds, reduce direct sun exposure, and minimize shadow effect on adjacent buildings;
 - (14) Preservation of adjacent view corridors;
 - (15) Whether the facades of building are properly terraced, landscaped, and designed;
 - (16) Relationship between and among uses along the adjacent street;
 - (17) Development contribution to the attractiveness of the street-scape; and
 - (18) Any other matter relating to the development or its impact on affected properties or

public facilities. [Eff 2/24/90; am and
 comp 10/10/98; comp 2/2/02; comp 12/9/02; am
 and comp NOV 03 2005] (Auth: HRS
 §§206E-4, 206E-5, 206E-7) (Imp: HRS
 §§206E -4, 206E-5, 206E-7)

§15-23-85 Lapse of development permit. (a) Any development permit granted under the provisions of this chapter shall automatically lapse if the initial building permit authorizing the construction of the foundation or superstructure of the project has not been issued within two years from the date of granting the permit, or, if judicial proceedings to review the decision to make the grant is instituted, from the date of entry of the final order in such proceedings including all appeals.

(b) Should a development permit provide for phased construction, the phases shall be constructed in accordance with the time periods set forth therein; however, if no time is specified, the development permit shall lapse if the building permit for the subsequent phase shall not have been issued within one year of the issuance of the occupancy permit for the previous phase.

(c) The authority or executive director, as the case may be, may grant an extension to the effective period of a development permit approved by the same, not to exceed two years, upon the applicant's request and justification in writing for an extension, provided the request and justification are received by the authority or executive director at least one hundred days in advance of the automatic termination date of the development permit and there are no material changes in circumstances which may be cause for denial of the extension. A public hearing shall be held on an extension request if a public hearing was held on the development permit or any variance or modification granted as part of the development permit process. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth:

HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-86 Conditions. The authority or executive director, as the case may be, may attach to a development permit conditions which may concern any matter subject to regulation under this chapter, including, but not limited to, the following:

- (1) Minimizing any adverse impact of the development on other land, including the hours of use and operation and the type and intensity of activities which may be conducted;
- (2) Controlling the sequence of development, including when it must be commenced and completed;
- (3) Controlling the duration of use of development and the time within which any structures must be removed;
- (4) Assuring that development, including all street furniture located in yards and bus stop shelters, is maintained properly in the future;
- (5) Designating the exact location and nature of development;
- (6) Establishing more detailed records by submission of drawings, maps, plats or specifications;
- (7) Requiring provision by the developer of streets, other rights-of-way, pedestrianways, bikeways, utilities, parks, and other open space, all of a quality and quantity reasonably necessary for the proposed development;
- (8) Requiring the connection of such development to existing public service systems;
- (9) Requiring the applicant to demonstrate financial, organizational, and legal capacity to undertake the development that is proposed, and to offer written assurance of compliance with any representations made

by it as part of the application for the development permit and any conditions attached to the permit;

- (10) Requiring the applicant to submit periodic reports showing what progress has been made in complying with any of the conditions imposed;
 - (11) Requiring the applicant to indicate the method of relocation of tenants and businesses; and
 - (12) Requiring the applicant to indicate the method of handling safety and security concerns, including the lighting of building interiors, grounds, landscaping, parking areas, and exterior common areas.
- [Eff 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-87 Requirement of providing reserved housing units. (a) Every applicant for a development containing multi-family dwelling units on a development lot of at least 20,000 square feet shall provide at least twenty per cent of the total number of dwelling units in the development for sale or rental to qualified persons as determined by the authority.

(b) The units, hereinafter referred to as "reserved housing units", shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter 7 of chapter 15-22. The applicant shall execute agreements as are appropriate to complement this requirement, and the agreements shall be binding upon the applicant and the applicant's successors in interest, and shall run with the land. The agreement shall provide that the applicant must provide certification to the authority as to the compliance of the requirements herein.

(c) The reserved housing requirements shall be satisfied in accordance with section 15-22-115.

(d) No building permit shall be issued for any development until the authority has certified that the development complies with the requirements of this section. The authority may require guarantees, may enter into recorded agreements with developers and with purchasers and tenants of the reserved housing units, and may take other appropriate steps necessary to assure that these housing units are provided and that they are continuously occupied by qualified persons. When this has been assured to the satisfaction of the authority and it has determined that the proposed development meets the requirements and standards of this section, the authority shall certify the application approved as to the housing requirements of this section. [Eff and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-88 Modification of specific provisions.
As a part of the development permit review process, the authority may modify plan and rule requirements provided a public hearing is held. Except as otherwise specifically provided, modifications may be granted only to the following:

- (1) Building envelope requirements;
- (2) Yards;
- (3) Loading space;
- (4) Parking;
- (5) Number of reserved housing units and the cash-in-lieu of providing reserved housing units; and
- (6) Open space, as follows:
 - (A) Obstructions overhead that enhance utilization and activity within open spaces or do not adversely affect the perception of open space; and
 - (B) Height from sidewalk elevation of four feet may be exceeded at a maximum height-to-length of 1:12 if superior visual relief from building mass results. [Eff 10/10/98; comp 2/2/02;

comp 12/9/02; §15-23-87; am, ren, and
 comp NOV 03 2005] (Auth: HRS
 §§206E-4, 206E-5, 206E-7) (Imp: HRS
 §§206E-4, 206E-5, 206E-7)

§15-23-89 Conditions for modification. (a) In order for the authority to consider modification of the zoning requirements listed in section 15-23-88, the applicant must demonstrate that:

- (1) The modification would provide flexibility and result in a development that is practically and aesthetically superior to that which could be accomplished with the rigid enforcement of this chapter;
- (2) The modification would not adversely affect adjacent developments or uses; and
- (3) The resulting development will be consistent with the intent of the makai area plan.

(b) The authority shall specify the particular evidence which supports the granting of a modification and may impose reasonable conditions in granting a modification. [Eff 10/10/98; comp 2/2/02; comp 12/9/02; §15-23-88; am, ren, and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-23-90 to 15-23-107 (Reserved)

§§15-23-108 to 15-23-137 REPEALED. [R 10/10/98]

SUBCHAPTER 4

SPECIAL URBAN DESIGN RULES

§15-23-138 Statement of purposes. The purpose of this subchapter is to provide for a high quality of

urban design in the makai area with an emphasis on the pedestrian environment, and to promote a strong relationship between individual developments and the overall context. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-139 Applicability. This subchapter shall apply to any development located on any development lot within the makai area and constructed after October 10, 1998, except alterations to nonconforming structures, public improvements and conditional use of vacant land. . [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-140 Streetscapes. (a) A high priority is placed on the streetscape design in the makai area in order to promote an outstanding pedestrian environment with access to the waterfront, parks, and commercial developments.

(b) The placement and location of curb cuts for driveways and drop-off areas shall be regulated as follows in order to promote continuous sidewalks without breaks or interruptions.

- (1) No curb cuts or drop-off areas, except as needed to allow access for persons with disabilities, shall be permitted along Ala Moana Boulevard, and Ilalo Street between Ahui and Punchbowl Streets; and
- (2) Curb cuts and drop-off areas may be permitted in other areas if the executive director finds that the curb cut or drop-off area will not result in unreasonable conflict between pedestrian and vehicular circulation and will result in a good site plan.

(c) All new developments shall provide facilities for central trash storage within the development lot. Where trash storage facilities are provided outside of a building, the facilities shall be screened by an enclosure constructed of materials compatible with the materials of the front building wall of the development. In all cases, there shall be provided an area for central trash collection. Such area shall be ventilated.

(d) Street furniture shall be provided as follows:

- (1) Benches shall be provided for resting places along pedestrianways at appropriate locations. One eight-foot bench shall be located in an area receiving shade adjacent to or near a public sidewalk for every development project. Benches shall be positioned to serve general pedestrian traffic. Along Ilalo Street the number, type and location of benches shall be provided in accordance with specifications approved by the authority; and
- (2) Bus stop shelters shall be provided for bus commuters where bus stops are located and the design and specifications shall be subject to the review and approval of the executive director. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-141 Tower spacing and circulation.

(a) Spacing between building towers shall be based upon the tower location on the development lot and distances between neighboring towers. To the extent practicable, tower spacing shall be as follows:

- (1) At least two hundred feet between the long parallel sides of neighboring towers; and
- (2) At least one hundred fifty feet between the short side of towers.

(b) Building design and siting shall be such that shadow effects on neighboring buildings shall be minimized.

(c) Public or private mid-block pedestrian or bicycle circulation paths, or both, may be required to be created and maintained in conjunction with developments. The developer of a development may be required to dedicate to the authority a perpetual public easement for pedestrian-ways, the appropriate width and location to be as determined by the authority.

(d) The authority may approve the construction of upper-level pedestrian-ways, provided that:

- (1) Required approvals from appropriate governmental agencies are obtained;
- (2) The design of the pedestrianway provides a safe and efficient linkage to major destination areas, complements the design of adjoining structures and open spaces, incorporates directional aids, and minimizes adverse impacts on designated view corridors, the streetscape, and required yards and open space;
- (3) Assurances are provided for adequate maintenance, security and insurance, unless the pedestrianway is dedicated to and accepted by the city and county of Honolulu;
- (4) The pedestrianway shall function solely as a corridor for pedestrian movement and shall not be used to conduct business activity of any kind;
- (5) Adequate access is provided to and from the street level. In approving an upper-level pedestrianway, the authority may impose terms and conditions as it finds are reasonable and necessary to carry out the purpose and requirements of this chapter and the makai area plan; and
- (6) It can be demonstrated that the upper-level pedestrianway does not result in the reduction of ground-level commercial activity that would otherwise take place.

[Eff 2/24/90; am and comp 10/10/98; comp 2/2/02;
comp 12/9/02; am and comp NOV 03 2005 1
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp:
HRS §§206E-4, 206E-5, 206E-7)

§15-23-142 Landscaping. (a) The authority recognizes the aesthetic, ecological, and economic value of landscaping and requires its use to establish an outstanding visual environment, to promote compatibility between land uses by reducing impacts of specific developments, and to enhance and define public and private spaces.

(b) All required yards shall be landscaped, except that front yards may be paved in accordance with specifications that are subject to review and approval by the executive director if ground floor windows are provided.

(c) Street trees shall be provided in accordance with specifications that are subject to review and approval by the executive director. Unless otherwise approved by the executive director, street trees shall be planted adjacent to the curb, forty feet on center or closer, and be a minimum of 4.5 inch caliper, except coconut palms, which shall be a minimum of fifteen feet tall, as follows:

<u>Street</u>	<u>Botanical Name</u>	<u>Common Name</u>
Ala Moana Boulevard	Cocos Nuciferas	Coconut Palm
Cooke	Cordia Subcordata	True Kou
Coral	Cordia Subcordata	True Kou
Ilalo	Samanea Saman	Monkey Pod
Kéawe	Cordia Subcordata	True Kou
Koula	Cordia Subcordata	True Kou
Ohe	Cordia Subcordata	True Kou
Olomehani	Cordia Subcordata	True Kou
Punchbowl	Cordia Subcordata	True Kou
South	Cordia Subcordata	True Kou

(d) The planting, removal, and maintenance of street trees within the public right-of-way fronting any development lot shall be subject to the approval of the department of parks and recreation, city and county of Honolulu.

(e) The planting, removal, and maintenance of trees within the front yard setback area of any development lot or nonconforming property shall be subject to the approval of the executive director. Any tree six inches or greater in trunk diameter shall not be removed except under the following conditions:

- (1) There are no alternatives to removal to achieve appropriate development on the site;
- (2) The tree is a hazard to public safety or welfare;
- (3) The tree is dead, diseased, or otherwise irretrievably damaged; or

- (4) The applicant can demonstrate that the tree is unnecessary due to overcrowding of vegetation.

Where possible, trees proposed for removal shall be relocated to another area of the project site. No person shall injure or destroy any tree in any manner or by any means. Property owners shall be responsible for ensuring that all trees within the front yard setback area are properly maintained and do not cause any hazard to public safety or welfare.

(f) Street tree species and location shall be subject to the approval of the executive director in consultation with the director of parks and recreation, city and county of Honolulu.

(g) Planting strips, if provided between the curb and sidewalk, shall be landscaped and provided with an irrigation system. Planting in these areas, except trees, shall not exceed thirty inches in height and shall be grass only where adjacent curbside parking is permitted.

(h) Sidewalk materials shall conform to the city and county of Honolulu standards for a minimum of seventy-five per cent of the required sidewalk area. The total sidewalk pattern and the material of the twenty-five per cent area shall be subject to the approval of the executive director. The executive director, in consultation with the chief engineer of the department of public works, city and county of Honolulu, may allow exceptions to the city and county standard paving.

(i) Street planters used for the purpose of holding plant materials, whether portable or permanently fixed, shall be provided by property owners within their property lines. Planters shall be located along major streets where sidewalks are greater than eight feet wide.

(j) Within private open space areas visible from street frontages, trees, shrubs, ground cover plant material are required.

(k) If there is any change in elevation from the sidewalk to the grade level private open space area, such change shall be no greater than four feet.

(l) Parking areas, open storage areas, and work areas provided at ground level facing the street shall be screened with plant material or other architectural treatment.

(m) All rooftop mechanical appurtenances, stairwells and elevator enclosures, ventilators, and air-conditioning equipment shall be screened from view by architectural or landscape treatments. [Eff 2/24/90; am and comp 10/10/98; am 1/13/00; comp 2/2/02; am and comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-143 Modification of urban design requirements. The authority or executive director, as the case may be, may allow modifications to the requirements of this subchapter. Modifications will be allowed if a finding is made that the modifications will enhance the design and quality of the development, or will not adversely affect the overall intent of this chapter and the makai area plan. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-23-144 to 15-23-157 (Reserved)

SUBCHAPTER 5

HISTORIC AND CULTURAL SITES

§15-23-158 Statement of purposes. The purpose of this subchapter is to preserve, protect, reconstruct, rehabilitate and restore properties situated in the district that are determined by the authority to be historic and culturally significant. [Eff 2/24/90; comp 10/10/98; comp 2/2/02;

comp 12/9/02; comp NOV 0 3 2005] (Auth: HRS
 §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5,
 206E-7)

§15-23-159 Historic or culturally significant property defined. The term, "property", as used in this subchapter, includes a site, location, facility, building, structure, setting or object. "Historic or culturally significant property" means any property that is:

- (1) Listed on the Hawaii or national register of historic places; or
- (2) Designated in the makai area plan as being: significant in the history or prehistory, architecture, culture, or development of Kakaako; a tangible, historic or cultural linkage between Kakaako of the past and Kakaako of the present; and capable of productive use to the extent that its owner is able to earn a reasonable return. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 0 3 2005] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-23-160 Designation. Properties deemed historic or culturally significant by the authority are so designated in the makai area plan. In addition to the properties determined to be significant and listed on the makai area plan, other properties may be considered for designation by the authority. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 0 3 2005] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-23-161 Procedure for designation. (a) Any person, including a governmental agency, or the authority on its own initiative, may nominate any property for designation on the makai area plan as an

historic or culturally significant property by the rule-making procedures set forth in the authority's rules of practice and procedure.

(b) In addition to the general rule-making petition requirements, each nomination shall contain the following information:

- (1) The name of the property nominated for designation;
- (2) The tax map key identification of the property and name or names of the owner or owners of the property;
- (3) A description of the property and how it qualifies for designation under section 15-23-160; and
- (4) A statement of the property's historic or cultural significance. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-7, 206E-33, 916) (Imp: HRS §§206E-7, 206E-33, 916)

§15-23-162 Uses. A property designated historic or culturally significant may be put to any use permitted in the land use zone in which the property is situated, subject to the requirements of section 15-23-164. Setback requirements shall not be enforced as to any lot on which an historic or culturally significant property is situated where the enforcement would result in damage to or destruction of the historic or culturally significant features of the property. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§15-23-163 Protective maintenance. All historic or culturally significant properties designated by the authority on the makai area plan shall be properly maintained and kept in good repair. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02;

comp NOV 03 2005] (Auth: HRS §§206E-7, 206E-33)
(Imp: HRS §§206E-7, 206E-33)

§15-23-164 Certificate of appropriateness. (a)
No permit shall be issued by the city and county of Honolulu for demolition, construction, alteration, repair or improvement which will affect any historic or culturally significant property, except after the issuance by the authority of a certificate of appropriateness.

(b) A developer, owner, or lessee of a historic or culturally significant property shall file with the executive director an application for a certificate of appropriateness for any proposed demolition, construction, alteration, repair, or improvement which will affect such historic or culturally significant property. The application shall be accompanied by supporting data and documents, including, as appropriate, the following:

- (1) A description of the historic or culturally significant property affected by the proposed project;
- (2) An area site plan indicating the location and nature of the project site improvements and site relationship to surrounding improvements;
- (3) Data on size, appearance, and form with sketches and perspectives of the building or structure proposed to be constructed, repaired or improved; and
- (4) Plans, elevations, and sections that fix and describe the project as to architectural character, and an outline specification setting forth exterior finishes and colors.

(c) The executive director shall evaluate the project and, within thirty days after submittal of the completed application for a certificate of appropriateness, determine whether the project is significant or nonsignificant, as defined below.

(d) If the executive director finds the project to be nonsignificant, a certificate of appropriateness

shall be issued. A project is deemed to be nonsignificant where it consists of alterations, repairs, or improvements which do not involve a change in design, material, character, or outer appearance of the affected property or a change in those characteristics which qualified the property for designation as an historic or culturally significant property.

(e) If the executive director finds the project to be significant, the executive director shall, within thirty days of such determination, prepare a summary report on the project, including an analysis of the data and documents supplied with the application for the certificate of appropriateness, and submit the report to the authority, together with a recommendation.

(f) Within one hundred days after receipt of the executive director's report, the authority shall either approve the proposed action in whole or in part, with or without modification or conditions, and issue a certificate of appropriateness or disapprove the proposed action. Before acting on the application, the authority shall hold a public hearing thereon. At the public hearing the applicant and other interested persons shall be given a reasonable opportunity to be heard. If the affected property is on the Hawaii or national register of historic places, the authority shall notify the state department of land and natural resources of its decision.

(g) The authority shall grant the application for a certificate of appropriateness if:

- (1) The proposed action will not unduly hinder the protection, enhancement, presentation, perpetuation and use of the property in its historic or culturally significant state; or
- (2) The property as it exists is no longer suitable to past or present purposes or is totally inadequate for the owner's or lessee's legitimate needs; or
- (3) The owner or lessee is unable to earn a reasonable return unless the proposed project is undertaken.

(h) Whenever an applicant for a certificate of appropriateness makes a showing that the property as it exists is totally inadequate for the owner's or lessee's legitimate needs or that the owner or lessee is unable to earn a reasonable return unless the project is undertaken, the authority may develop and propose alternatives to the proposed project that will enable the owner or lessee to put his property to reasonable use or to earn a reasonable return. Such alternatives may include a sale of the property to a buyer or lessee who will utilize the property without the action proposed by the applicant; it may also include partial or complete tax exemption, governmental grants-in-aid and other financial and technical assistance. The owner or lessee may accept or reject any alternative proposed by the authority.

(i) If the owner or lessee rejects all alternatives proposed by the authority, the authority may elect to acquire the property by eminent domain, in which case, action to condemn the property shall be commenced within ninety days of said rejection. If on the other hand the owner or lessee rejects the alternatives proposed by the authority, and the authority determines not to acquire the property by eminent domain, the authority shall issue a certificate of appropriateness to the applicant. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

§§15-23-165 to 15-23-177 (Reserved)

SUBCHAPTER 6

MASTER PLAN RULES

§15-23-178 Purpose and intent. Rules relating to master plans contained within the mauka area rules are incorporated herein by reference with the

exception that hotel uses will not be permitted and that floor area and uses permissible in the mauka area will not be transferred to the makai area. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp NOV 03 2005] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-7, 206E-33)

§§15-23-179 to 15-23-191 (Reserved)

SUBCHAPTER 7

RULES REVIEW AND AMENDMENT

§15-23-192 Rules review and amendment. The makai area rules may be reviewed and amended in accordance with the authority's rules of practice and procedure. [Eff 2/24/90; comp 10/10/98; comp 2/2/02; comp 12/9/02; comp NOV 03 2005] (Auth: HRS §206E-5) (Imp: HRS §206E-5)

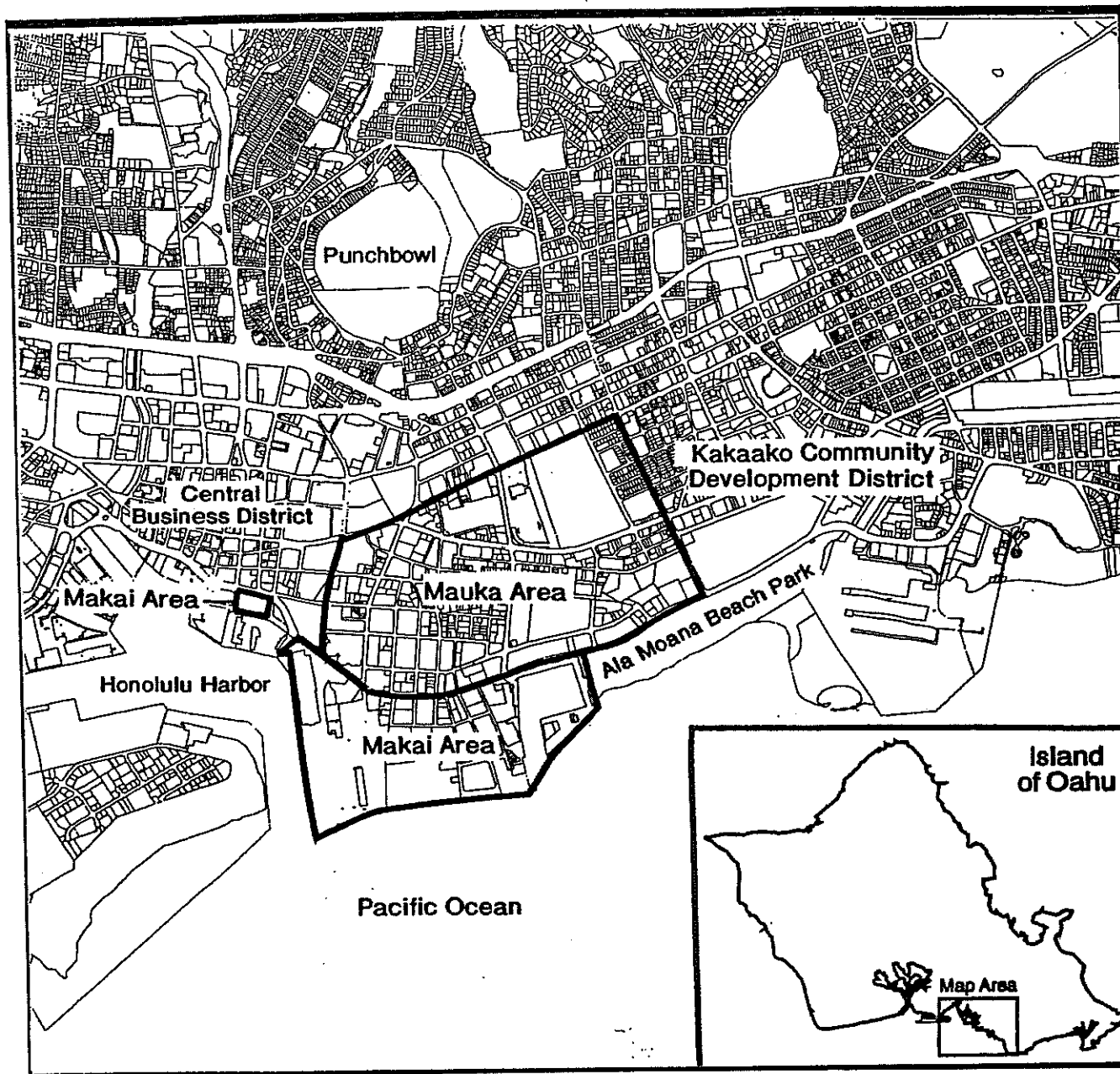
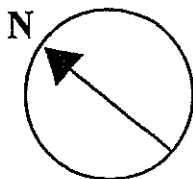


Exhibit 1
Makai Area Context Plan



September 2005

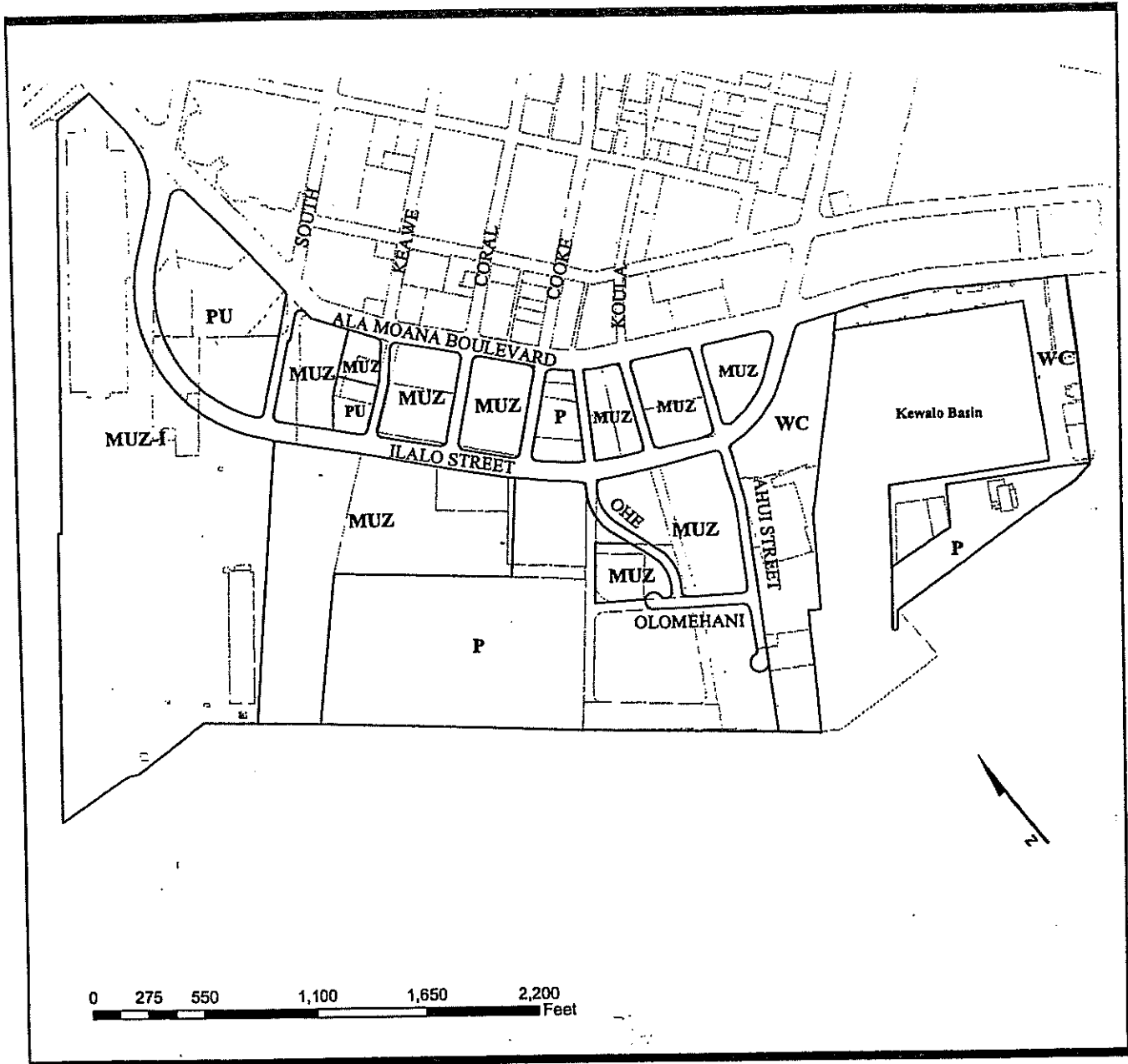


Exhibit 2
Land Use Zones

LEGEND:

- MUZ** Mixed-Use Zone
- MUZ-I** Mixed-Use Zone - Industrial
- WC** Waterfront Commercial
- PU** Public
- P** Park

September 2005

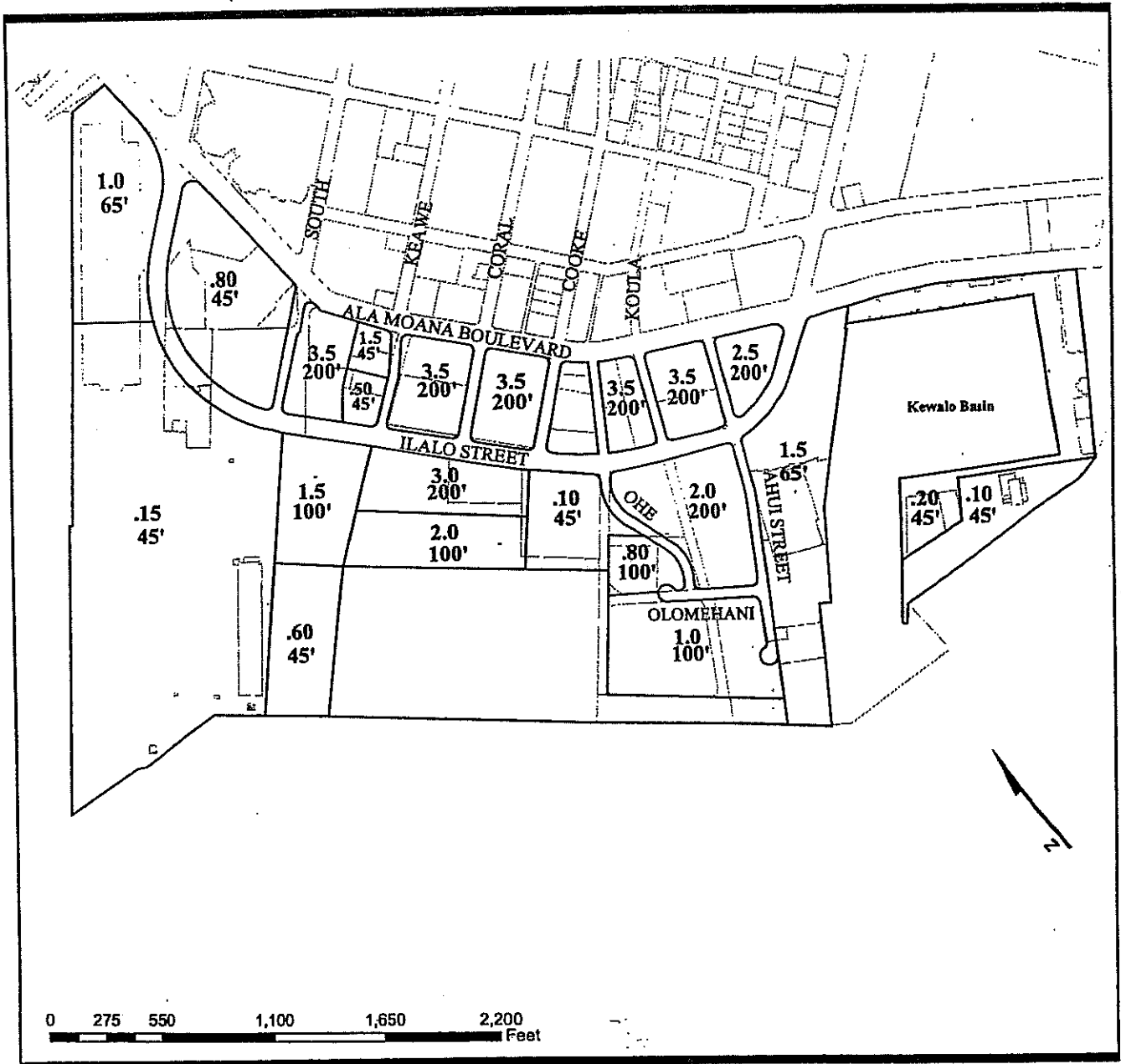


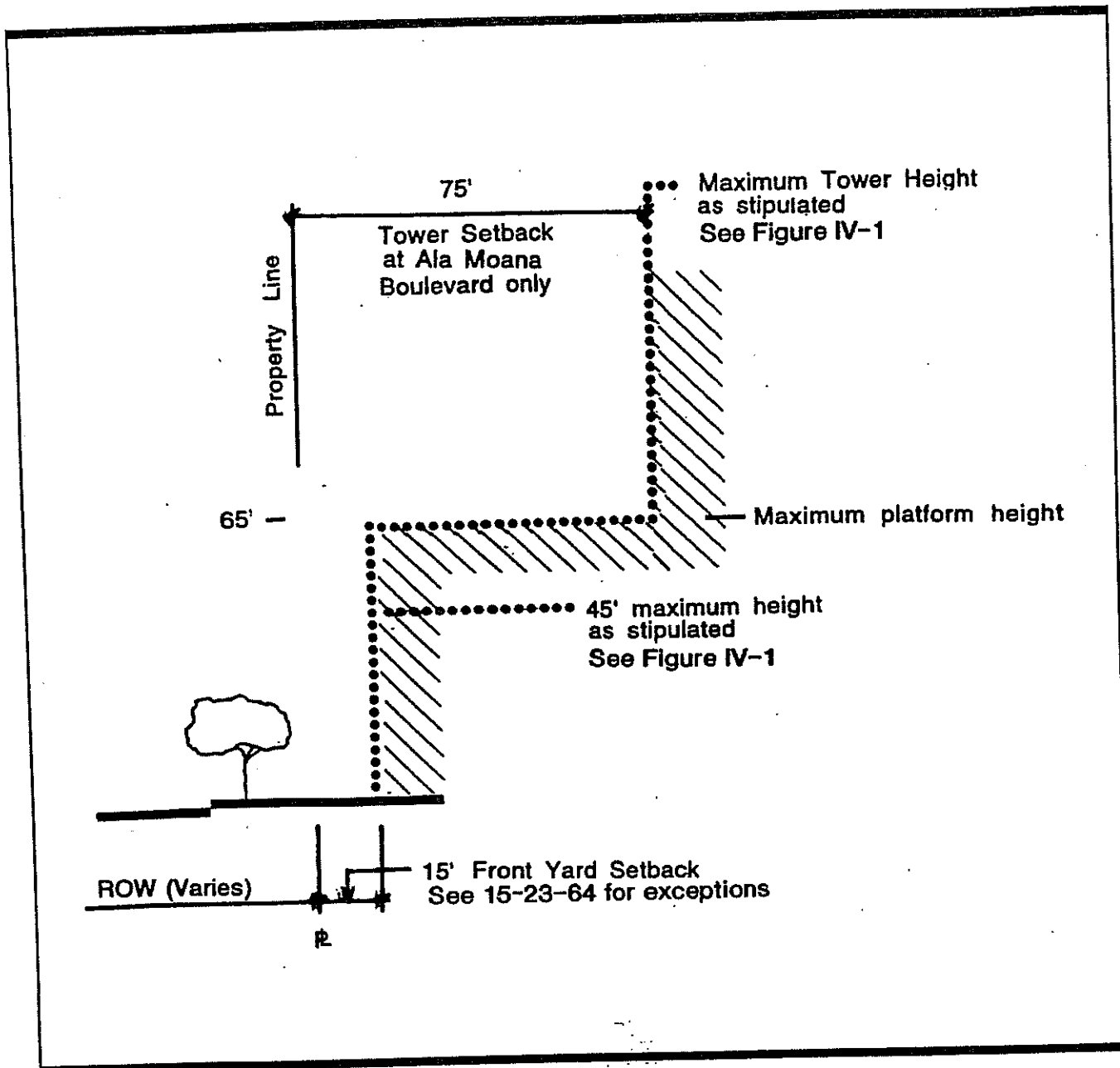
Exhibit 3
Maximum Height and Density Plan

LEGEND:

200' Indicates Maximum Allowable Height

3.5 Indicates Maximum FAR

September 2005



Not to Scale

Exhibit 4
Maximum Building Envelope

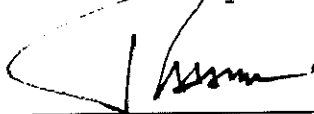
September 2005

Amendments to and compilation of chapter 23, title 15, Hawaii Administrative Rules, on the Summary Page dated September 7, 2005 were adopted on September 7, 2005 following a public hearing held on September 7, 2005, after public notice was given in the Honolulu Star-Bulletin, The Maui News, West Hawaii Today, Hawaii-Tribune Herald, The Garden Isle on August 8, 2005.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

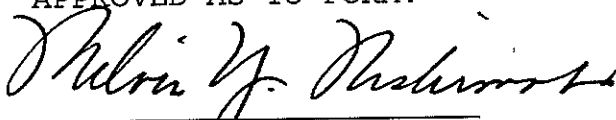


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LINDA LINGLE
Governor
State of Hawaii

Date: OCT 24 2005

Filed

05 OCT 24 12:24

LIEUTENANT GOVERNOR