

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Adoption of Chapter 15-220
Hawaii Administrative Rules

June 23, 2021

SUMMARY

Chapter 220 of Title 15, Hawaii Administrative Rules, entitled "Heeia Community Development District Rules" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 220

HEEIA COMMUNITY DEVELOPMENT DISTRICT RULES

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SUBCHAPTER 1

PURPOSE AND APPLICABILITY

§15-220-1 Title. (a) This chapter 220 of the Hawaii Administrative Rules ("HAR") shall be known, and may be cited, as the Heeia community development district (CDD) rules.

(b) References to "rules" within this chapter are references to the Heeia CDD rules unless indicated otherwise. References to other regulations or provisions relevant to the Hawaii community development authority ("authority" or "HCDA"), where provided, are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure, or use from other regulations.

(c) The figures, dated _____, attached at the end of this chapter and the Heeia CDD Master Plan, dated _____, are hereby incorporated by reference and made a part of this chapter.

[Eff _____] (Auth: HRS §§206E-5, 206E-7)
(Imp: HRS §§206E-5, 206E-7)

§15-220-2 Purpose. (a) The rules carry out the manao hooko (intent) of the guiding principles of the Heeia CDD Master Plan ("Heeia MP") by classifying and regulating land uses within the Heeia CDD consistent with, and in furtherance of, the Heeia MP and chapter 206E, Hawaii Revised Statutes ("HRS").

(b) The rules are adopted to protect and promote the public health, safety, and general welfare of the community and to protect and preserve places and areas of historical, cultural, architectural, or environmental importance and significance, as set forth in the Heeia MP and chapter 206E, HRS.

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7)

§15-220-3 Applicability. (a) This chapter,

together with the Heeia MP, shall govern all real property located within the Heeia CDD. This chapter shall control if a conflict involving the provisions of this chapter and the Heeia MP arises.

(b) No building permit shall be approved by the authority for any public improvement or any project within the Heeia CDD unless the project conforms to the provisions of the Heeia MP and this chapter.

(c) No public improvement or project within the Heeia CDD shall be initiated or adopted unless it conforms to and implements the Heeia MP and this chapter.

(d) Except as otherwise expressly provided in this chapter, the rules shall supersede the city and county of Honolulu's land use ordinance. The foregoing ordinance is hereby declared to be inconsistent with this chapter and shall therefore be inapplicable to projects within the Heeia CDD unless otherwise specifically stated.

(e) Except as otherwise provided in this chapter, all other rules and laws shall remain applicable to the public improvements, projects, and properties in the Heeia CDD, including but not limited to "Kuleana lands", defined in HAR §15-220-8.

[Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-4 Minimum requirements. The provisions of the rules are minimum requirements for the protection and promotion of public health, safety, and welfare and the decision-maker may impose additional requirements where authorized and appropriate and does not guarantee compliance with other rules, regulations, or laws imposed by other governmental entities. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-5 Rules of interpretation. (a) Provisions of the rules are activated by "shall" when

required; "should" when recommended; and "may" when optional.

(b) In addition to text-only contents of the rules, this section shall also control related captions, titles, and figures.

(c) Terms not defined in section 15-220-8 (definitions of terms) shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and those found elsewhere within the HCDA's administrative rules, these rules shall take precedence.

(d) Where in conflict, numerical metrics shall take precedence over graphic metrics.

(e) Words used in the singular include the plural; words used in the plural include the singular.

(f) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(g) Within the rules, sections are occasionally prefaced with "purpose" or "intent" statements. Each such statement is intended as an official statement of legislative finding or purpose. The "purpose" or "intent" statements are legislatively adopted, together with their accompanying rules text. They are intended as a guide to the administrator and shall be treated in the same manner as other aspects of legislative history. However, they are not binding standards.

(h) In their interpretation and application, the provisions of the rules are considered minimal in nature. Whenever the provisions, standards, or requirements of chapter 219, HCDA's rules of practice and procedure, are higher or more restrictive, the latter shall control.

(i) Whenever the executive director determines that the meaning or applicability of any requirement of the rules is subject to interpretation generally, or as applied to a specific case, the executive director may issue an official interpretation. The executive director may also forward any interpretation of the meaning or applicability of any provision of

the rules directly to the authority for a determination at a public meeting:

- (1) The issuance of an interpretation shall include findings stating the basis for the interpretation. The issuance of an interpretation shall also include a finding documenting the consistency of the interpretation with the Heeia MP;
- (2) All interpretations shall be:
 - (A) Written and shall quote the provisions of the rules being interpreted, and the applicability in the particular or general circumstances that caused the need for interpretations, and the determination; and
 - (B) If applicable, distributed to the authority, executive director, and HCDA staff;
- (3) Any interpretation of the rules by the executive director may be appealed to the authority in compliance with section 15-220-63 (appeals); and
- (4) Any provision of the rules that is determined by the executive director to need refinement or revision will be corrected by amending the rules as soon as is practical. Until an amendment can occur, the executive director will maintain a complete record of all interpretations to the rules, indexed by the number of the subchapter, section or subsection that is the subject of the interpretation.

(j) If there is uncertainty about the location of any land use zone boundary shown on the land use plan, the location of the boundary shall be determined by the executive director by using the scale appearing on the land use plan. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-6 Compliance with other regulations. (a)

Conflicting requirements resulting from application of the rules shall be resolved as follows:

- (1) Heeia CDD rules. If a conflict occurs between requirements within the rules, the most restrictive shall apply;
- (2) Heeia MP. If a conflict arises between the Heeia MP and the rules, the Heeia MP shall take precedence; and
- (3) Federal regulations. If a conflict occurs between these rules and federal regulations, the federal regulations shall take precedence;
- (4) Kuleana lands. If a conflict occurs between the rules and kuleana lands, the rights and regulations applicable to kuleana lands shall take precedence; and
- (5) Private agreements. The rules shall apply to all real property located within the Heeia CDD regardless of whether the rules impose a greater or lesser restriction on the project or the use of structures or land than a private agreement or restriction.

(b) HAR Chapter 219, HCDA's rules of practice and procedure shall apply to the Heeia CDD and may be referenced herein. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-7 Severability. These rules shall be liberally construed to protect and preserve the health, safety, and general welfare within the Heeia CDD. Should any provision of the rules be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-8 Definition of terms. This section provides definitions for terms in these rules that are

technical in nature or that otherwise may not reflect a common usage of the term. If a term is not defined in this section, then the executive director shall determine the correct definition based on the interpretation of the provisions of HAR section 15-220-5 (rules of interpretation).

"Administrative" is a use classification for uses pertaining to the affairs of a business, service, industry, or like activity, including offices, security and staff support uses.

"Agribusiness" is a use classification for accessory uses that provide the means to get an agricultural good to market, including production, marketing, and distribution.

"Agricultural building" means a nonresidential building or structure, built for agricultural or aquacultural purposes, constructed or installed to house farm implements, agricultural or aquacultural feeds or supplies, livestock, poultry, or other agricultural or aquacultural products, used in or necessary for the agricultural or aquacultural operation or for the processing or selling of agricultural and aquacultural products.

"Agricultural kauhale" means a building or structure built for the housing of farm workers.

"Aquaculture" is a use classification for the rearing of aquatic animals or the cultivation of aquatic plants for food.

"Artisan or craft production" is a use classification for the manufacturing and assembling of products primarily by hand, including but not limited to clothing, furniture, jewelry, woodworking, pottery and ceramics, art, and craft products.

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

"Building" means any permanently anchored structure used or intended for supporting or sheltering any use or occupancy.

"Civic" is a use classification which includes uses that foster community interaction and citizen participation in civic activities such as: meeting

halls or clubhouse, conference centers, cultural facilities, public safety facilities, and public or government facilities.

"Cultural facilities" is a use classification for facilities of an historic, an educational, or a cultural interest.

"Educational facilities" is a use classification pertaining to instruction or education.

"Elevation" means an exterior wall of a building not along a frontage line.

"Executive director" means the executive director of the Hawaii Community Development Authority.

"Group assembly" is a use classification for the gathering of people for activities including a music festival, cultural event, exhibition, lecture, concert, celebration, or similar activity which is open to the public or to which members of the public are invited or admitted either for a charge or free of cost.

"Guideline" means a provision that is suggested to further the intent of the Heeia MP and rules, but that is not compulsory.

"Habitable space" means space in a structure for living, sleeping, eating, or cooking. Bathrooms, closets, halls, storage areas and utility spaces are not considered habitable spaces.

"Hawaii revised statutes" or "HRS" means the Hawaii Revised Statutes.

"Health and healing center" is a use classification for facilities that promote native Hawaiian healing, practices, and traditions.

"Heeia CDD" means the district, established by section 206E-202, HRS, which establishes the Heeia Community Development District and its boundaries;

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

"Land use" means a designation of land with approved uses that can legally operate within the Heeia CDD.

"Land use map" means the official map or maps that are part of the Heeia CDD rules and delineate the boundaries of individual zones and the district.

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

"Livestock" means all animals generally associated with farming, which are raised and kept for food and other agricultural purposes.

"New building" means and includes the construction of a building including structural supports, walls, and a roof.

"Nonconforming structure" means a building or structure that was lawfully erected prior to the effective date of the adoption or amendment of this chapter but no longer complies with all the regulations applicable to the Heeia CDD as a result of adoption or amendment of this chapter or government action associated with eminent domain.

"Nonconforming use" means an activity using land, buildings or structures for purposes which were legally established prior to the effective date of the adoption or amendment of this chapter, but would not be permitted as a new use in any of the land use zones established by this chapter.

"Outdoor recreation" is a use classification for recreational facilities operated for monetary or on a nonprofit basis and which typically include fields, play areas, and activities.

"Project site" means the gross land area of a lot for a proposed project.

"Public building" is a use classification pertaining to buildings owned or developed by public entities or developed on state-owned lands.

"Public project" means any project or activity of any county or state agency conducted to fulfill a

governmental function for public benefit and in accordance with public policy.

"Public utility project" means any project or activity of any county or state agency conducted to upgrade or construct utilities, including sanitary sewer, drain lines, water, gas, electrical, telephone, cable, pedestrian facilities, and roadway systems.

"Story" means a level within a building that can be used for living, work, storage, or recreation, excluding an attic or raised basement.

"Structure" means anything constructed or erected with a fixed location on the ground, including buildings, walls, and signs.

"Utilities and communications" is a use classification for basic amenities such as water, sewerage, electricity, and communications that will support the individual facilities and uses in the Heeia CDD.

"Vocational school" is a use classification pertaining to training in a skill or trade to be pursued as a career. [Eff _____] (Auth: HRS §§206E-2, 206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-2, 206E-4, 206E-5, 206E-7)

§§15-220-9 to 15-220-20 (Reserved).

SUBCHAPTER 2

LAND USE

§15-220-21 Purpose. This subchapter establishes the land use zones within the Heeia CDD and adopts the land use plan for the Heeia CDD as its zoning map. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-22 Land use plan. The Heeia CDD rules land use plan (hereafter referred to as the "land use

plan") is included as Figure 2, dated _____, made a part of this chapter. [Eff _____]
 (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-23 Land use zones. (a) The land use plan is comprised of three land use zones corresponding to the Heeia MP. (see Figure 2 (land use plan), dated _____, made part of this chapter and attached at the end of this chapter). These land use zones and their corresponding use rules and guidelines are as follows:

- (1) Wao ho ola zone. The Wao ho ola zone is located in the upland portion of the district and is envisioned as an area of restoration, respite, and healing to specifically provide an opportunity for dry-land agriculture and facilities that promote these restoration, respite, and healing objectives;
- (2) Wao kahua zone. The Wao kahua zone located within higher elevations outside of the wetland area and is envisioned as the area of strong foundation to establish educational, cultural, and agricultural support facilities. A range of uses are proposed, such as dry land agriculture, cultural practices, education and research, restoration, and resource management;
- (3) Wao loko ia kalo zone. The Wao loko ia kalo zone is the wetland area of the district and is envisioned as the area of mahiai (cultivation of food) and aina momona (land that is abundant and food producing). The uses contemplated within this zone are: wetland and stream restoration, taro and dryland cultivation, development of loko ia (fishponds and detention ponds), activities involving traditional and customary Native Hawaiian cultural practices, education, and arts. It will also contain support

structures and facilities for agricultural activities.

(b) All projects shall conform to the land uses specified in Figure 2 (land use plan), dated _____, made a part of this chapter and attached at the end of this chapter. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-203) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-203)

§15-220-24 Allowable land uses. (a) Buildings in each land use zone shall conform to the allowable land uses specified in Figure 3 (allowable uses), dated _____, made a part of this chapter, and attached at the end of this chapter. [Eff _____] (Auth: HRS §206E-7) (Imp: HRS §206E-7)

§§15-220-25 to 15-220-35 (Reserved)

SUBCHAPTER 3

AREA-WIDE STANDARDS

§15-220-36 Purpose. (a) This subchapter establishes standards relating to the use and construction of any structure within the Heeia CDD. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-37 Applicability. This subchapter applies to all permit applications and use classifications, except where a section provides otherwise. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-38 Agricultural use and structures. (a)

The following agricultural buildings and structures that are not used as dwellings or lodging units are exempt from HCDA permit requirements where the buildings or structures do not exceed one thousand square feet:

- (1) Nonresidential manufactured pre-engineered commercial buildings and structures;
- (2) Single stand-alone recycled ocean shipping or cargo containers that are used as nonresidential buildings and are properly anchored;
- (3) Notwithstanding the one thousand square foot floor area restriction, agricultural shade cloth structures, cold frames, or greenhouses not exceeding twenty thousand square feet in area per structure;
- (4) Aquaculture or aquaponics structures, including above-ground water storage or production tanks, troughs, and raceways with a maximum height of six feet about grade, and in-ground ponds and raceways, and piping systems for aeration, carbon dioxide, or fertilizer or crop protection chemical supplies within agriculture or aquacultural production facilities;
- (5) Livestock watering tanks, water piping and plumbing not connected to a source of potable water, or separation by an air gap from such a source;
- (6) Non-masonry fences not exceeding ten feet in height and masonry fences not exceeding six feet in height that are not located along Kamehameha Highway or adjacent to any private property;
- (7) One-story masonry or wood-framed buildings or structures with a structural span of less than twenty-five feet and a total square footage of no more than one thousand square feet, including farm buildings used as:
 - (A) Barns;
 - (B) Greenhouses;

- (C) Farm production buildings including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment or plant or animal supplies or feed; or
 - (E) Storage or processing buildings for crops, provided that the height of any stored items shall not exceed twelve feet in height;
- (8) Raised beds containing soil, gravel, cinders or other growing media or substrates with wood, metal or masonry walls or supports with a maximum height of four feet;
 - (9) Horticultural tables or benches no more than four feet in height supporting potted plants or other crops; and
 - (10) Nonresidential indigenous Hawaiian hale that do not exceed five hundred square feet in size, have no kitchen or bathroom, and are used for traditional agricultural activities or education;
- (b) Notwithstanding the one thousand square foot floor area restriction in subsection (a), the following buildings, structures, and appurtenances shall require a rules clearance permit when in compliance with relevant construction standards:
- (1) Nonresidential manufactured pre-engineered and county pre-approved commercial buildings and structures consisting of a total square footage greater than one thousand square feet, but no more than eight thousand square feet; and
 - (2) One-story wood-framed or masonry buildings or structures with a structural span of less than twenty-five feet and a total square footage greater than one thousand square feet, but no more than eight thousand square feet constructed in accordance with relevant construction standards, including buildings used as:
 - (A) Barns;
 - (B) Greenhouses;

- (C) Farm production buildings, including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment, plant or animal supplies, or feed; or
 - (E) Storage or processing buildings for crops; provided that the height of any stored items shall not collectively exceed twelve feet in height.
- (c) The exemptions in subsections (a) and (b), shall apply; provided that:
- (1) The aggregate floor area of the exempted agricultural buildings shall not exceed:
 - (A) Five thousand square feet for project sites of two acres or less;
 - (B) Eight thousand square feet for project sites greater than two acres, but not more than eight acres; and
 - (C) Eight thousand square feet plus two per cent of the acreage per project site for sites greater than five acres, provided that each exempted agricultural building is compliant with restrictions in subsections (a) and (b);
 - (2) The minimum horizontal separation between each agricultural building, structure, or appurtenance is fifteen feet;
 - (3) The agricultural buildings, structures, or appurtenances are constructed or installed on property that is used primarily for agricultural or aquacultural operations and are used for general agricultural or aquaculture;
 - (4) No electrical power and no plumbing shall be connected to the building or structure without first obtaining the appropriate county electrical or plumbing permit; and
 - (5) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with chapter 342D, HRS; and

- (6) The applicant shall submit written notice to the city and county of Honolulu of the size, type, and location of the proposed agricultural building to confirm that the project is in compliance with applicable county, state and federal codes, statutes, rules or regulations. [Eff]
 (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7, 46-88)

§15-220-39 Building form. (a) The height of any building or structure or portion thereof shall not exceed two stories.

(b) Height limits for attics or raised basements, masts, elevator bulkheads, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances on the roof level shall be limited to the height necessary for their proper functioning. The executive director shall make the final determination on the height necessary for proper functioning. Attics shall not exceed fourteen feet in height. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-40 Architectural design. (a) The architectural character of all structures shall blend with the natural environment of the Heeia CDD.

- (1) Building materials should be sustainable and responsive to Heeia's tropical climate;
- (2) Environmentally sensitive design features should respect the human scale, encourage the use of natural daylight and ventilation, and promote the use of natural resources;
- (3) Building colors and surfaces should generally be absorptive rather than reflective;
- (4) The building mass should be contained to a minimum footprint required to support the proposed facility and use; and

- (5) Pedestrian circulation in and around any facility shall be designed to provide a safe walking environment, especially for accessing parking areas.
- (b) Fences, walls, and hedges may be constructed or installed to a height of six feet except where a section herein provides otherwise.
 - (1) Retaining walls shall be constructed of masonry or stone or other equally durable material.
 - (c) Lighting:
 - (1) Lighting sources shall be constructed or installed so that light is aimed downward and does not spill over to abutting properties;
 - (2) Lighting that is visible from adjacent properties or thoroughfares shall be indirect or incorporate full shield cut-offs; and
 - (3) Incandescent exterior lights and high-pressure sodium lights are prohibited.
 - (d) Signage. All signs shall be in compliance with the applicable rules and regulations administered by the city and county of Honolulu, as provided for in the city and county of Honolulu's land use ordinance, as it may be amended from time to time. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-41 Parking. (a) Applicability. This section applies to all new buildings in the Heeia CDD.

(b) There shall be no parking requirement for agricultural uses in all land use zones.

(c) For new buildings in the Heeia CDD, the executive director will review the proposed use and determine its equivalent and applicable off-street parking requirements.

(d) Permeable surfaces for parking and maneuvering areas are permitted. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-42 Landscape. Where applicable, all yards within projects shall be landscaped with native or adapted plant species and/or hardscaped with permeable material. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-43 Historical and cultural sites. (a) Purpose. The purpose of this section is to preserve, protect, and restore properties in the Heeia CDD that are determined to be historic and culturally significant.

(b) Applicability. This section applies to all historical or culturally significant properties as identified in the Heeia MP.

(c) Preservation and consultation. Properties identified in the Heeia MP that are deemed to be historically or culturally significant shall be preserved and protected in accordance with the implementing regulations of section 106 of the National Historic Preservation Act and chapter 6E, HRS:

- (1) All projects that propose the restoration of historic and cultural sites shall consult with the department of land and natural resources, state historic preservation division ("SHPD"), department of land and natural resources to allow an opportunity for review of the effect of the proposed project on any historic properties or burial sites, pursuant to section 6E-43, HRS;
- (2) A written letter of concurrence from SHPD or adequate documentation that the applicant has complied with the requirements of chapter 6E, HRS, shall be included with the permit application to the authority; and
- (3) All SHPD requirements shall be completed by the applicant prior to submittal of a permit application to the authority.

(d) Uses classifications. 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 this section. [Eff _____] (Auth: HRS §§206E-7, 206E-203) (Imp: HRS §§206E-7, 206E-203, 6E-43)

§15-220-44 Temporary uses. Temporary structures, such as tents and booths, may be permitted in any land use zone for periods not exceeding thirty days, provided that the executive director may grant extensions for an additional thirty days. [Eff _____] (Auth: HRS §§206E-7) (Imp: HRS §§206E-7)

§15-220-45 to 15-220-55 (Reserved).

SUBCHAPTER 4

PROCEDURES

§15-220-56 Rules clearance permit. (a) Applicability. Any uses, structures, and activities identified by subsection (b) shall be issued a rules clearance from the rules when they are in compliance with applicable standards of subchapter 2 (land use) and subchapter 3 (area-wide standards) and, where applicable, those relating to section 15-220-65 (nonconformities);

(b) Qualifying land uses, structures, and activities. The following are eligible for issuance of a rules clearance when in compliance with subsection (a):

- (1) Agricultural structures and uses identified in section 15-220-38(b) (agricultural use and structures);
- (2) Fences and walls in compliance with height and location requirements in section 15-220-40 (architectural design);

(3) Interior alterations or change in use;

(4) Repairs and maintenance on all structures if the work does not change the approved land use of the site or structure;

(5) Aquaculture and aquaponic uses; and

(6) Any public utility project.

(c) Action. In accordance with Figure 1 (approval requirements) dated _____, made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all rules clearance applications consistent with this section after receipt of a complete application. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-57 Facility permit. (a) Applicability. All new buildings shall require a facility permit unless waived in accordance with section 15-220-38 (agricultural use and structures) or eligible for a rules clearance under section 15-220-56.

(b) Initiation. An applicant may apply for a facility permit by filing an application with the executive director.

(c) Types. All facility permits shall be subject to the authority's review and action pursuant to Figure 1 (approval requirements), dated _____, made a part of this chapter, and attached at the end of this chapter.

(d) Required findings. Approval of a facility permit shall require all of the following findings of fact:

- (1) Heeia MP consistency. That the proposal complies with and advances the goals, policies, objectives, and manao hooko (intent) of the Heeia MP;
- (2) Heeia CDD rules consistency. That the proposal will protect, preserve, or enhance desirable characteristics of the district through compliance with the standards and guidelines of the rules; and
- (3) Compatibility. That the proposal will not

have a substantial adverse effect on surrounding uses and will be compatible with the existing and planned land use character of the Heeia CDD and broader Heeia ahupuaa.

(e) Conditions. In approving a facility permit, the authority may impose any reasonable conditions to ensure that the approval complies with the findings required above. Any conditions attached to a facility permit shall continue to apply to the proposed use and shall be enforceable as provided in section 15-220-66 (violations and enforcement). [Eff _____]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-58 Conditional use permit. (a) No inherent right exists to receive a conditional use permit. Every conditional use permit application shall, at a minimum, comply with every requirement contained in these rules. Mere compliance with the generally applicable requirements however may not be sufficient, and additional measures and conditions may be necessary to mitigate the impact of the proposed project.

(b) Applicability. Uses are as designated in Figure 3 (allowable uses), dated _____, made a part of this chapter, and attached at the end of this chapter.

(c) Decision-maker. Conditional use permits are subject to authority review and action pursuant to Figure 1 (approval requirements), dated _____, made a part of this chapter, and attached at the end of this chapter.

(d) Findings. Approval of a conditional use permit shall require all the following findings of fact:

- (1) The use is allowed within the applicable land use zone and complies with all other applicable provisions of the rules;
- (2) The use will conform to the Heeia MP;
- (3) The design, location, size, and operating characteristics of the proposed use are

compatible with manao hooko (intent) of the district;

- (4) The site is physically suitable for the type and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
- (5) Granting the permit would not be detrimental to the public health, safety, or welfare, or be materially injurious to persons, lots, or to the district.

(e) Conditions. In approving any conditional use permit, the authority may impose such reasonable standards, conditions, or requirements, as it may deem necessary to protect the public welfare and in order to ensure the approval will comply with the findings of this section. Such additional standards, conditions or requirements may include, but are not limited to:

- (1) Limitations on operations and use;
- (2) Area requirements; and
- (3) Standards pertaining to circulation, noise, hours of operation, protection of environmentally sensitive areas, and similar characteristics. [Eff _____]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-59 Variances. (a) Purpose. This section is intended to provide a mechanism for relief from the strict application of the rules where the strict application will deprive the applicant of privileges because of the subject site's unique and special conditions. Economic or financial hardship alone is not sufficient justification for granting a variance.

(b) Applicability. All requirements of the rules are mandatory unless a variance is obtained,

(c) Variances shall be subject to authority review and action as set forth in Figure 1 (approval requirements), dated _____, made a part of this chapter, and attached at the end of this chapter:

(d) Findings. Approval of a variance shall require all the following findings of fact:

- (1) Uniqueness. That there are unique physical conditions, including irregularity of the lot size or shape or exceptional topographical or other physical conditions peculiar to and inherent in the particular project area; and that, as a result of such unique physical conditions, practical difficulties or unusual hardship arise in complying strictly with the standards of the rules;
- (2) Self-created hardship. That the practical difficulties or unusual hardship claimed as the basis for a variance has not been created by the applicant;
- (3) Minimal deviation. That the variance, if approved, is the minimum deviation necessary to afford relief; and to this end, the decision-maker may permit a lesser variance than that applied for;
- (4) Character. That the variance, if approved, will not alter the existing character of the area and will not be detrimental to the public welfare and the environment; and
- (5) No adverse impact. The variance would result in a project that would not be detrimental to nor adversely impact the district.

(e) Submittal requirements. Each variance application shall include, at a minimum, the following:

- (1) A statement of the standard or standards that are the subject of the requested variance;
- (2) A textual description of the manner in which the applicant proposes to deviate from such evaluation standard or standards;
- (3) Plans drawn to scale, showing the nature, location, and dimensions of the structure, area, or part thereof that is the subject of the requested variance;

- (4) A statement of the justification for the requested variance based on the requirements set forth in this section; and
- (5) Other information as may be required by the decision-maker. [Eff _____]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-60 Completeness review. (a) Purpose. The purpose of the completeness review is to determine whether all required information is provided in a permit application. A completeness review shall not constitute a decision as to whether an application complies with the provisions of the rules.

(b) Applicability. This section applies to all applications for permits provided for in the rules.

(c) Application materials. No application may be deemed complete unless all of the information required by forms published by the HCDA is included. The executive director shall ensure that application materials are made available in hardcopy format at the HCDA office and electronically via the internet.

(d) Jurisdiction. All applications shall be reviewed by the executive director for completeness. At the time of proposed filing, the executive director may reject any application that omits information required by forms published by the HCDA. Once accepted for filing, the executive director's final determination on the completeness of an application is appealable to the authority pursuant to section 15-220-63(appeals).

(e) Commencement of time limit for application decision. Whenever the rules establish a time period for processing an application, such time period does not commence until the executive director has issued a certificate of completeness.

(f) Completeness review process:

- (1) The executive director shall provide a written determination on the completeness review within forty-five working days of receipt of the permit application. If a

permit application is deemed complete, the executive director shall issue a certificate of completeness. If the permit application is determined not to be complete, the executive director's determination shall specify those parts of the application that are incomplete and shall indicate how the deficiency can be resolved, via a list and thorough description of the specific information needed to complete the application;

- (2) If the application requires review by any other local, state, or federal agency or entity, the executive director may require written comments from such agency or entity prior to deeming the application complete and until such time that the executive director receives all such comments, the forty-five day period shall be tolled;
 - (3) Upon receipt of any application that has been resubmitted, a new forty-five-day period shall begin, during which period the executive director shall determine the completeness of the application;
 - (4) If the applicant contests the executive director's determination of an incomplete application, the applicant may appeal the executive director's determination to the authority pursuant to section 15-220-63 (appeals). If the authority does not render a decision on the appeal within thirty working days after submittal of the requisite appeal form and filing fee, the application with the submitted materials shall be deemed complete for the purposes of this section; and
 - (5) Nothing in this section precludes an applicant and the executive director from mutually agreeing to an extension of any time limit provided by this section.
- (g) Time limits. A certificate of completeness is deemed issued if the executive director fails to

act within the time period required for concluding the completeness review. In computing the time periods referenced in this section, the date when the application was submitted shall not be included and the last day of the time limitations period shall be included unless that date is not a working day, in which case the last day of the time limitations period shall be the next working day.

(h) Information requests. After the executive director issues a certificate of completeness or the application is deemed complete per this section, the executive director or the authority may, in the course of processing the application, request that the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application, if such clarification, amplification, correction or other supplementation of the information would be required by the decision-maker to render a final determination on the merits. [Eff]
 (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-61 Automatic approvals. (a) The following permits shall be deemed approved and require no public hearing if a certificate of completeness has been issued and no decision is rendered within the following review periods:

- (1) Rules clearance (sixty calendar days);
- (2) Facility Permit (ninety calendar days); and
- (3) Variance (one hundred eighty calendar days).

(b) Whenever a proposed project requires more than one permit, the longest review period of this section shall apply for determining the deemed approved date. [Eff] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-62 Approval period. (a) The following permit approvals shall automatically lapse if the initial building permit authorizing the construction

has not been issued or if construction has not commenced on the project:

- (1) Rules clearance permit approvals shall have an effective approval period of one year;
- (2) Facility permits shall have an effective approval period of two years, unless extended under these rules;
- (3) Conditional use permits shall have an effective approval period of two years, unless extended under these rules; and
- (4) Variance approvals shall have an effective approval period of two years, unless extended under these rules.

(b) Prior to expiration and upon submittal of a written request, a facility permit may be extended by the authority for a period of up to one year. The authority may issue up to two extensions.

(c) Prior to expiration and upon submittal of a written request, a conditional use permit may be extended by the authority for a period of up to one year. The authority may issue up to two extensions.

(d) Prior to expiration and upon submittal of a written request, a variance approval may be extended by the authority for a period of up to one year. The authority may issue up to two extensions.

(e) In computing the approval period, the day upon which the approval was granted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

[Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-63 Appeals. (a) Decisions of the executive director rendered in the administration of the rules are appealable, as provided herein, to the authority (see Figure 1 (approval requirements), dated _____, made a part of this chapter, and attached at the end of this chapter).

(b) An appeal of an executive director decision shall be sustained by the authority only if it finds:

- (1) The executive director's decision was based on an erroneous finding of material fact; or
- (2) The executive director acted in an arbitrary or capricious manner or had manifestly abused his or her discretion.

(c) All appeals of a decision by the executive director shall be filed and processed in accordance with chapter 219, HCDA's rules of practice and procedure. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-64 Minor changes. (a) After final approval of a rules clearance, facility permit, conditional use permit or variance, the executive director may allow minor amendments to the application without submittal of a new or amended application when the requested amendment does not:

- (1) Introduce different land uses;
- (2) Request larger land area;
- (3) Request a greater variance; and
- (4) Reduce or eliminate any conditions attached to the subject permit approval.

(b) Any other change requests which do not qualify under subsection (a) shall require the filing of a new application to be processed in accordance with this subchapter. [Eff _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-220-65 Nonconformities. (a) Applicability. This section applies to nonconformities, including their continuation, enlargement, or expansion.

(b) Continuation. A nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all authority statutes or regulations in effect at that time may continue subject to this section.

(c) Violation of rules. The violation of this section shall immediately disallow a nonconformity.

(d) Nonconforming uses:

- (1) Continuance of nonconforming uses. The lawful use of any structure existing as of the effective date of the rules may be continued, although such use does not conform to the provisions of the rules. Such use may be extended throughout the structure, provided that no structural alterations or additions to the structure occur, except those made in conformance with the rules; and
- (2) Changes of use:
 - (A) Any nonconforming use may be changed to a use conforming with the rules established for the land use zone in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not in the future be changed back to a nonconforming use; and
 - (B) A nonconforming use may only be expanded under the provisions of subsection (e)(2).
- (e) Nonconforming structures:
 - (1) Continuance of nonconforming structures. Subject to the provisions of subsection (b), any nonconforming structure may be occupied, operated, and maintained in a state of good repair;
 - (2) Enlargement, conforming and nonconforming use. A nonconforming structure in which only permitted uses are operated may be enlarged or extended if the enlargement or extension can be made in compliance with all regulations established in subchapter 2 (land use) and subchapter 3 (area-wide standards); and
 - (3) Exception for repairs pursuant to public order. Nothing in the strengthening or restoration to a safe condition of a building or structure in accordance with an order of a public official who is charged with protecting the public safety and who

declares such structure to be unsafe and orders it to restoration to a safe condition, provided that such restoration is not otherwise in violation of the various provisions of this subsection prohibiting the repair or restoration of partially damaged or destroyed buildings or structures. [Eff _____] (Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-220-66 Violations and enforcement. All provisions relating to violations of these rules and enforcement of said violations are provided in chapter 219, HCDA's rules of practice and procedure. [Eff _____] (Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

§15-220-67 Fee schedule. There are no fees for rule clearance facility and conditional use permits. Public hearing costs for variance requests shall be the paid for by the applicant. [Eff _____] (Auth: HRS §206E-7) (Imp: HRS §206E-7)

§§15-220-68 to 15-220-80 (Reserved).

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

Chapter 15-220, Hawaii Administrative Rules, on the Summary Page dated June 23, 2021, was adopted on June 23, 2021, following public hearings held on May 26, 2021 and June 23, 2021, after public hearing notice was given in the Honolulu Star Advertiser, Hawaii Tribune-Herald, The Maui News, West Hawaii Today, and The Garden Island, on April 26, 2021.

The adoption of chapter 15-220, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

DEEPAK NEUPANE, P.E., AIA
Executive Director
Hawaii Community Development
Authority

MICHAEL McCARTNEY
Director
Department of Business,
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APPROVED AS TO FORM:

Deputy Attorney General

DAVID IGE
Governor
State of Hawaii

Date:

Filed

List of Figures
June 23, 2021

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Figure 1: Approval Requirements

Approvals	Decision Maker	
	Executive Director	Authority
Rules Clearance	D	A
Temporary Use	D	A
Facility Permit	R	D
Conditional Use Permit	R	D
Variance	R	D

R: Provides Recommendation to the Authority
D: Renders Decision on Permit Application
A: Considers Appeal of Executive Director's Decision

Figure 2: Land Use Plan

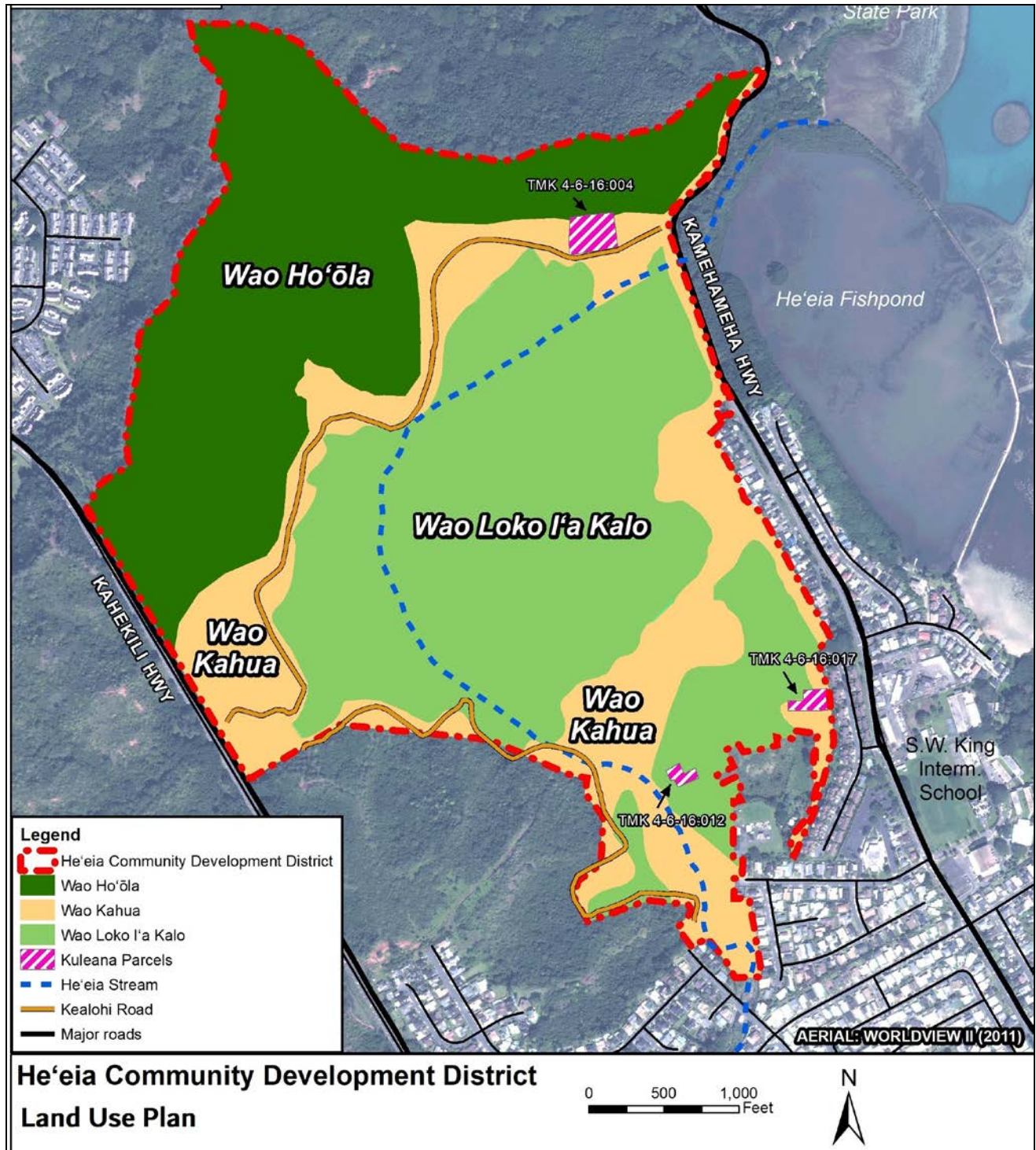


Figure 3: Allowable Uses

Uses:	Notes:
Agriculture:	
Administration, Security and Staff Support	
Agribusiness and Manufacturing	
Agricultural Kauhale	Conditional Use Permit
Agricultural Support and Processing	
Aquaculture and Aquaponics	
Base Yard, Maintenance, and Warehouse	Include planing mill to process non-native wood.
Composting	
Crop Production	
Food Manufacturing and Production	
Nursery	
Livestock	
Research and Development	
Educational and Cultural:	
Art and Cultural Centers	
Artisan and Craft Production	
Education Facilities:	
<ul style="list-style-type: none"> • Language Arts • Learning Centers • Schools • Vocational Training 	
Health and Healing Centers	Conditional Use Permit if overnight use
Research and Development	
Hawaiian Hale, Retreat and Meeting Center	Conditional Use Permit if overnight use
Outdoor Recreation	
Recreational Facilities and Programs	
Restoration and Land Management:	
Alanui	
Wetland	
Stream and ‘Auwai	
Forest and Upland	
Natural/Ecosystem	
Social and Civic Service	
Meeting Facility	
Public Use and Structures	
Educational	
Utilities and Sustainability	
Antennas	
Solar for support facilities	
Recycling	
Infrastructure	