

CHARMAINE TAVARES

Mayor

KATHLEEN ROSS AOKI

Director

ANN T. CUA

Deputy Director



COUNTY OF MAUI

## DEPARTMENT OF PLANNING

December 14, 2010

### Memorandum Report

To: Maui Planning Commission

From: Kathleen Ross Aoki, Planning Director *K.R.A*

**SUBJECT: AMENDMENT TO CHAPTER 202 SPECIAL MANAGEMENT AREA RULES FOR THE MAUI PLANNING COMMISSION TO INCREASE FINES AND HAVE THE HEARING VIOLATIONS HEARD BY COMMISSION INSTEAD OF THE PLANNING DIRECTOR**

Amendments to the Maui Special Management Area (SMA) Rules are subject to 12-201-21 which states that the petitions to amend shall follow 12-201-92 of the Rules and Practices of the Maui Planning Commission.

The proposed amendments are attached as Exhibit 1. A summary of the proposed changes are as follows:

- (Section 12-202-23 (d)(1)) - Increase the initial maximum SMA violation from \$ 10,000 to \$100,000 per violation. This change will bring the commission rules in line with existing State law, as defined in HRS 205A-32 Penalties.
- (Section 12-202-23 (d)(1)) - Establishes a provision for service of a notice of violation to be published in the newspaper if acceptance of the notice of violation is refused via certified mail.
- (Section 12-202-23-(d)(3)) - Allows for a stay on the hearing pending a negotiated settlement, while preserving the alleged violator's rights to due process.
- (Section 12-202-25) – Increase the maximum daily fine from \$1,000 to \$10,000 per day. This change will bring the commission rules in line with existing State law under HRS 205A-32 Penalties.
- (Section 12-202-25.1) - Adds a new section on the Enforcement of SMA conditions, representation, or commitments in obtaining an SMA permit. Establishes a new process in order to enforce and ensure conditions are completed, and if conditions are not met this section establishes the commission power to revoke the permit.
- (Section 12-202-26) - Amendment to "Appeal of the director's decision" clarifies that appeals of decisions by the director are processed by section 12-202-26, but violations issued by the director are processed via section 12-202-23.

The Department is recommending approval of the proposed amendments.

Attachment

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250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793

MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

Amendments to Chapter 202  
Special Management Area Rules  
for the Maui Planning Commission

1. Section 12-202-23, Special Management Area Rules for the Maui Planning Commission, is amended by amending subsection (d) to read as follows:

"(d) Issuance of notice of violation and order.

(1) The landowner or the alleged violator, or both, shall be notified by the enforcement agency by certified or registered mail of an alleged violation of this rule, any permit issued pursuant thereto, or any condition of a special management area permit approval. The notice of violation and order shall include, but not be limited to, the specific section of this rule which has been violated, the nature of the violation, and the remedy(ies) available. The notice of violation and order may also require that the violative activity cease, or that the violative development be removed; that a civil fine be paid not to exceed [\$10,000] \$100,000 per violation; and that a civil fine be paid not to exceed [\$1,000] \$10,000 per day for each day in which the violation persists, in addition to the foregoing and any other penalties. If service of the notice by registered or certified mail is not made because of the refusal to accept service, or if the director is unable to ascertain the address of the landowner or alleged violator after reasonable and diligent inquiry, notice may be given by publication at least once in each of two successive weeks in a newspaper of general circulation.

(2) The notice of violation and order shall state that the order shall become final thirty days after the date of its mailing, unless written request for a hearing is mailed or delivered to the enforcement agency within said thirty days. Nothing in this section shall prevent the landowner or violator from seeking to negotiate a settlement or resolve a dispute.

(3) If the violator seeks a negotiated settlement with the enforcement agency, [but waives the right to a hearing,] the hearing may be stayed

pending settlement. [the] The enforcement agency, in consultation with the department and the corporation counsel, may negotiate a settlement agreement with the landowner or, if appropriate, the violator, that provides for cure of the violation, set any fine, and inspection of parcel by the enforcement agency and the department. The proposed settlement shall be forwarded to the commission for final action.

- (4) Any request for a hearing shall be in writing and delivered, or mailed and postmark dated, to the department within thirty days, as stated on the notice. Upon receipt of a request for a hearing, the department shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the [director or the director's designee] commission in accordance with the provisions of chapter 91, HRS, as amended.
- (5) The department, in consultation with the department of the corporation counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.
- (6) Nothing in this section shall prohibit the department, through the corporation counsel, from filing an order or motion directly with a court in the event that public health, safety and welfare may be at risk." [Eff 1/1/94; am 9/28/97; am and comp] (Auth: HRS §§91-9.5, 205A-43, 205A-43.6) (Imp: HRS §43.6)

2. Section 12-202-25, Special Management Area Rules for the Maui Planning Commission, is amended to read as follows:

"§12-202-25 Penalties. Any person who violates any provision of these rules shall be liable for an initial civil fine not to exceed [\$10,000] \$100,000 per violation and maximum daily fine of [\$1,000] \$10,000 in addition to any other penalties until the violation is corrected. A

civil fine may be imposed by the department after an opportunity for a hearing under chapter 91, HRS, as amended, unless said hearing is otherwise waived. A special management area permit application submitted subsequent to an applicant's having completed the development or having been cited for the activity or construction without having obtained special management area approval, shall not stay any order to pay civil fines." [Eff 1/1/94; am 9/28/97; am and comp] (Auth: HRS §205A-32) (Imp: HRS §§205A-22, 205A-26, 205A-28, 205A-29, 205A-30, 205A-33)

3. Chapter 202, Special Management Area Rules for the Maui Planning Commission, is amended by adding a new section to read as follows:

"§12-202-25.1 Enforcement of conditions, representations, or commitments; order to show cause.  
(a) The commission, on its own motion, may issue an order to show cause, or the director or any party or interested person may file a petition with the commission for an order to show cause, upon a showing that there has been a failure to perform a condition, representation, or commitment on the part of a permit holder or a person whose proposed action was determined to be exempt from the requirements of this chapter pursuant to section 12-202-12. The director, party, or person filing the petition shall serve a copy of the petition for an order to show cause upon the permit holder or the person whose proposed action was determined to be exempt, as the case may be. The petition for order to show cause shall state:

- (1) The interest of the petitioner;
- (2) The permit in question;
- (3) The condition, representation, or commitment that has not been performed or satisfied;
- (4) Concisely and with particularity the facts, supported by an affidavit, giving rise to a belief that a condition, representation, or commitment has not been performed or satisfied;
- (5) A description and a map of the property affected;
- (6) The specific relief requested; and

(7) Any other information that the commission requires for an adequate investigation into the matter.

(b) The commission may reject any petition that is incomplete, inaccurate, or fails to comply with the rules of the commission. The rejected petition shall be returned to the petitioner.

(c) The commission may request the assistance of the director and department staff in the investigation of any alleged breach of a condition, representation, or commitment.

(d) Whenever the commission has reason to believe that there has been a failure to perform according to conditions imposed, or representations or commitments made, the commission shall issue and serve upon the party or person bound by the conditions, representations, or commitments, an order to show cause why the permit should not be revoked, amended, or modified, or why the proposed action should not be deemed to be a development, as the case may be. The commission shall serve the order to show cause in writing at least thirty days before the hearing. The order to show cause shall include:

(1) A statement of the date, time, place, and nature of the hearing;

(2) A description and a map of the property to be affected;

(3) A statement of the legal authority under which the hearing is to be held;

(4) The sections of the statutes, ordinances, or rules involved; and

(5) A statement that any party may retain counsel if the party so desires.

(e) The commission shall conduct a hearing on an order to show cause in accordance with the requirements of subchapter 4 of these rules, where applicable. Any procedure in an order to show cause hearing may be modified or waived by stipulation of the parties and informal disposition may be made in any case by stipulation, agreed settlement, consent order, or default." [Eff] (Auth: HRS §§91-2, 205A-29) (Imp: HRS §§91-9, 91-9.5)

4. Section 12-202-26, Special Management Area Rules for the Maui Planning Commission, is amended to read as follows:

"§12-202-26 Appeal of director's decision; filing the notice of appeal. [(a)] Appeal of the director's decision, other than a notice of violation issued pursuant to section 12-202-23, may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director's written decision, or, where the director's decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director's decision. The notice of appeal shall be filed in accordance with section 12-201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission's next regularly scheduled meeting, of the filing of the notice of appeal." [Eff 1/1/94; am and comp 9/28/97; am and comp 11/4/02; am and comp] (Auth: Charter §§8-8.4, 13-2.15) (Imp: HRS §§205A-29, 205A-30, 205A-49)

5. Subchapter 3, Special Management Area Rules for the Maui Planning Commission, is amended by adding the designation of "reserved" to the following sections:

§§12-202-33 to 12-202-39 (Reserved)

6. Chapter 202, Special Management Area Rules for the Maui Planning Commission, is amended by adding a new subchapter 4 to read as follows:

"SUBCHAPTER 4

HEARINGS ON APPEALS OF NOTICES OF  
VIOLATION AND ON ORDERS TO SHOW CAUSE

§12-202-40 Purpose. This subchapter governs procedures before the commission for the hearing of appeals of notices of violation and orders to show cause. These procedures may be modified or waived by the parties

with the consent of the chairperson. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-41 Parties. The director and the parties served shall be parties to the proceedings. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-42 Contents of the notice of appeal from a notice of violation. The notice of appeal shall:

- (1) Identify the party or parties taking the appeal;
- (2) Designate the notice of violation appealed from, and provide a copy of the notice of violation attached as an exhibit;
- (3) Have affixed to the notice of appeal proof that service of the notice of appeal was made on all parties to the appeal. Administrative staff for the commission shall permit a notice of appeal to be filed without the proof of service, but the person who filed the notice of appeal shall file the proof of service within seven days after the filing of the notice of appeal;
- (4) Set forth a concise statement setting forth the nature of the appeal, the facts material to consideration of the appeal presented, the alleged error committed by the director, and any relevant statutes, ordinances, or administrative rules pertaining to the matter under appeal;
- (5) Provide the following information:
  - (A) Documents identifying the owner of the subject parcel of land;
  - (B) Owner's name, address and, if available, telephone numbers;
  - (C) Agent's name, address and telephone numbers, if applicable;
  - (D) Tax map key number of the parcel and its street address, if available; and
  - (E) Map identifying the site, adjacent roadway, and landmarks. [Eff] (Auth:

HRS §205A-27; Charter §§8-8.4.4, 13-2.15)  
(Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-43 Service of the notice of appeal. The alleged violator shall serve a file-marked copy of the appeal in accordance with section 12-201-21, rules of practice and procedure for the Maui planning commission. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-44 Notice of hearing. The commission shall give written notice of hearing to all parties in accordance with section 91-9.5(b), Hawaii Revised Statutes. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-45 Record. (a) For the purpose of commission decisions, the record shall include:

- (1) All pleadings, motions, and intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and matters officially noticed by the commission;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) Report of the officer who presided at the hearing; and
- (6) Staff memoranda submitted to the commission in connection with its consideration of the case.

(b) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(c) No matters outside the record shall be considered by the commission in making its decision except as provided in this chapter. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-46 Hearing procedure. Unless otherwise stipulated by the parties, and subject to orders of the commission, which may alter the sequence of presentation of a case when necessary, hearings under this subchapter shall proceed as follows:

- (1) The director may make an opening statement. The other party may also make an opening statement, either immediately after the director's statement or at the beginning of the other party's case.
- (2) After the opening statement or statements, the director shall produce the evidence in support of the director's case;
- (3) The other party may then produce the evidence in support of the party's case;
- (4) The parties may then respectively offer rebutting evidence only; and
- (5) When the presentation of evidence is concluded, the director may present final arguments, followed by the other party, and then the director in rebuttal, which shall be limited to matters raised in the other party's final argument. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-47 Failure to appear. In the event of a party's failure to appear before the commission after proper notice has been served upon the party, or when a party or a party's representative leaves the hearing while the hearing is in progress, the commission may proceed with such hearing without the party's presence. Failure of a party or a party's representative to appear before the commission after proper notice has been served, or the unauthorized departure of a party or a party's representative during a hearing, shall constitute waiver of a party's right to be heard in person or through counsel and of the party's right to present evidence and argument. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-48 Failure of witness to appear. In the event of a witness' failure to appear before the commission to testify as a witness after being subpoenaed, the commission may continue the hearing and request that a contempt citation be issued by the circuit court to compel such witness to appear before the commission. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-49 Evidence. (a) The admissibility of evidence at a hearing shall not be governed by the laws of evidence. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The commission shall give effect to the rules of privilege recognized by law.

(b) Each party may conduct such cross-examination as may be required for a full and true disclosure of facts.

(c) When objections are made to the admission or exclusion of evidence, the grounds for the objection shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken. The chair shall rule on the admissibility of evidence.

(d) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.

(e) Exhibits shall conform to the provisions of sections 12-201-20(b) and 12-201-20(c), rules of practice and procedure for the Maui planning commission, where applicable, and shall be filed with the commission.

(f) Documentary evidence may be received in the form of copies, provided that, upon request, all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible, but the non-availability of the original and the reasons therefore may be considered by the commission when considering the weight of the documentary evidence.

(g) The commission may take notice of facts not subject to reasonable dispute in that they are either generally known within the County or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and generally

recognized technical or scientific facts. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-50 Disclosure. (a) Any party may, by written demand, timely filed with the commission, and served upon any other party, request of any other party to the proceeding, the full disclosure of:

- (1) The identity of all witnesses to be called by the other party, unless prohibited by law; and
- (2) All exhibits, including, but not limited to copies of documents, photographs, and other tangible evidence to be introduced by the other party at the hearing.

(b) All demands for disclosure shall continue in effect for the duration of the proceeding and the party to whom the demand is directed shall be under a continuing duty to disclose the information requested when it becomes available.

(c) The information requested shall be disclosed to the requesting party at least seven days before the hearing. Failure to comply with disclosure requirements may result in the exclusion of evidence subject to the disclosure request. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-51 Discovery. No depositions, interrogatories, or requests for production of documents shall be allowed. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-52 Limiting testimony. To avoid unnecessary cumulative evidence, the chair may limit the number of witnesses and the time for testimony upon a particular issue. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-53 Removal from proceeding. Any person or persons who willfully disrupt a hearing or otherwise compromise the conduct of the hearing shall be removed from the hearing room. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-54 Co-counsel. Where a party is represented by more than one counsel, counsel may allocate witnesses between them, but only one counsel for a party may examine or cross-examine a witness or state any objections or make closing arguments. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-55 Subpoenas. (a) Requests for the issuance of subpoenas requiring the attendance of witnesses shall be presented to the chair in writing, and shall state the reasons why the testimony is material and relevant.

(b) Requests for the issuance of subpoenas shall be presented to the chair not less than ten calendar days before the scheduled hearing, unless otherwise ordered.

(c) No subpoena shall be issued unless the requesting party has complied with this section and gives the name and address of the witness. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-56 Fees and mileage. Witnesses summoned by subpoena shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii, and such fees and mileage shall be paid by the party requesting the subpoena. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-57 Oath. Witnesses shall be placed under oath or affirmation before testifying. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-58 Joint or consolidated appeals of a notice of violation. If two or more parties are entitled to appeal from a notice of violation and their interests are such as to make joinder practicable, they may file a joint notice of appeal and thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the commission upon the commission's own motion, upon motion of a party, or upon stipulation of the parties to the several appeals, if the consolidation will be conducive to the proper dispatch of business and to the ends of justice and will not unduly delay the proceedings. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-59 Substitution of parties. Upon motion and for good cause, the commission may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-60 Transcripts. Should any of the parties request transcripts or appeal the decision of the commission, the commission shall fairly allocate the transcription costs between the parties. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-61 Correction of transcript. Motions to correct a transcript shall be filed within seven working days after receipt of the transcript, unless otherwise directed, and shall be served on all parties. Such motions shall certify the date when the transcript was received. If no objections are received within ten days after date of service, the transcript will, upon approval of the commission, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration to the stenographic transcript of the hearing. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-62 Submission of proposed findings. A proceeding shall stand submitted for decision by the commission after the taking of evidence, and the presentation of such oral argument as may have been allowed. A party to the proceeding may submit to the commission proposed findings of fact, conclusions of law, and decision and order within ten days of the close of the hearing and shall serve copies of said proposals on all parties. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-63 Standard of review for appeals of notices of violation. Unless otherwise provided by law, the commission may affirm the notice of violation or the commission may reverse the notice of violation if the substantial rights of the appellant may have been prejudiced because the notice of violation is:

- (1) Based on a clearly erroneous finding of material fact or erroneous application of the law; or
- (2) Arbitrary or capricious in its application; or
- (3) A clearly unwarranted abuse of discretion.

[Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-64 Order to show cause proceedings, revocation or modification of conditions, orders, or permit. If the commission finds by a preponderance of the evidence that there has been a failure to perform a condition, representation, or commitment on the part of the permit holder, the commission may revoke, amend, or modify the permit, or allow the permit holder a reasonable opportunity to correct or remedy the failure. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-65 Issuance of decision and order. (a) Every decision and order adverse to a party to the proceeding shall be in writing or stated in the record

and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling that addresses such findings. Such decisions and orders shall be rendered within forty-five calendar days from the close of oral argument by the parties.

(b) If the commission affirms a notice of violation issued by the director, the appellant shall pay any penalty imposed by the director at the office of the department within ten calendar days of the receipt of the commission's findings of fact, conclusions of law, decision and order. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-66 Reconsideration of decision and order. The decision and order of the commission shall be final and no motions for reconsideration shall be accepted by the commission. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-67 Service of decisions and orders. Decisions and orders shall be served by mailing certified copies to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to a proceeding has appeared by a representative, service upon the representative or counsel shall be deemed to be service upon the party. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-68 Appeals; record. (a) Any party aggrieved by the final decision and order of the commission may seek judicial review in accordance with section 91-14, Hawaii Revised Statutes. Any order to stay the enforcement of the commission's decision shall be by an order of the circuit court pursuant to section 91-14, Hawaii Revised Statutes.

(b) Any party requesting judicial review shall serve a copy of the request upon the commission and all other parties in accordance with the Hawaii Rules of Civil Procedure.

(c) Unless the commission has been notified in writing of a party's request for judicial review within the time permitted for requesting judicial review, the commission, after the time for requesting judicial review has passed, may cause exhibits to be returned to the party introducing the exhibits or order the disposal or destruction of the exhibits if the party does not wish its return, the party cannot be contacted, or if it is impractical or illegal to return such exhibits to the party. [Eff] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-202-69        RESERVED"

7. Material, except source notes, to be repealed is bracketed. New material is underscored.

8. Additions to update source notes to reflect these amendments are not underscored.

9. These amendments to Chapter 202, Special Management Area Rules for the Maui Planning Commission, shall take effect ten days after filing with the Office of the County Clerk.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at Wailuku, Maui, Hawaii.

MAUI PLANNING COMMISSION

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Chairperson

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CHARMAINE TAVARES  
Mayor, County of Maui

Approved this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM  
AND LEGALITY:

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JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui  
S:\CLERICAL\LJN\RULES\Planning\AmendChapter 202SMAforMPC060210.wpd

Received this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

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JEFFREY T. KUWADA  
Clerk, County of Maui

CERTIFICATION

I, KATHLEEN ROSS AOKI, Planning Director, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Amendments to Chapter 202, Special Management Area Rules for the Maui Planning Commission, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which was adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by affirmative vote of the proper majority following a public hearing on \_\_\_\_\_, 20\_\_\_\_; and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing rules was published in The Maui News on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

COUNTY OF MAUI

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KATHLEEN ROSS AOKI  
Planning Director