

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

November 10, 2022

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

SUBJECT: REQUEST FOR APPROVAL TO HOLD STATEWIDE PUBLIC HEARINGS TO AMEND AND COMPILE TITLE 13, CHAPTER 209, HAWAII ADMINISTRATIVE RULES: RULES REGULATING ACTIVITIES WITHIN NATURAL AREA RESERVES (NARS)

The rule amendment can be reviewed online at:  
<http://ltgov.hawaii.gov/the-office/administrative-rules/> or can be reviewed in person at any Division of Forestry and Wildlife district office from 8:00 am to 3:30 pm, Monday through Friday, except State holidays.

### SUMMARY

Various amendments are proposed for the NARS rules to improve consistency with other rules, amend prohibited activities and penalties, allow longer-term special use permits, allow for the collection of parking fees in Keoneo'io, Maui, raise the parking fees for non-resident vehicles, and manage commercial use similar to Na Ala Hele. These proposed rules also seek to extend the closure of areas that have already been closed since 2008 at 'Ahihi Kina'ū NAR on Maui and restrict access to off-trail areas in Mt. Ka'ala NAR on O'ahu. The Ka'ala boardwalk trail and other marked trails would remain open. The Division is seeking the ability to hold public hearings on these proposed revisions.

### DISCUSSION

Comments on the amendments per section are listed below:

#### **§13-209-2 Definitions.**

Amendments to the “commercial activity,” “motorized vehicle,” and “vehicle” are proposed to be consistent with the revised definitions for other land designations of the Division of Forestry and Wildlife.

#### **§13-209-4 Prohibited activities.**

In the existing rules, only dogs permitted by hunting rules or service animals were allowed in NARs. The proposed change would allow leashed dogs in designated trails in

Pahole Natural Area Reserve, and clarify that service animals should be trained guide dogs. Trained guide dogs have a more strict definition than service animals. This is meant to further restrict the type of dogs brought into Reserves, particularly popular areas with very sensitive seabird nesting sites like Ka'ena Point.

Additional clarifying language has been added to existing prohibited classes of activities.

A prohibition of launching boats in certain portions of 'Ahihi Kina'ū NAR is requested for areas where there is very limited space or where coral reefs exist in shallow launching areas. This prohibition would direct boat launching to focus instead on nearby areas which have sandier substrates or where the coral is found in deeper waters.

The prohibition against bringing fishing gear into 'Ahihi Kina'ū NAR is proposed to only affect areas where these actions are already prohibited. This would allow the Department to add new areas to the NAR without prohibiting fishing in those newly added areas.

New prohibitions about feeding animals have been added to prevent attracting non-native predators. Additionally, a prohibition against unmanned aircraft is proposed. Unmanned aircraft have been lost in State lands, and have attracted operators to risk dangerous situations or venture off-trail to recover them. A provision to prohibit entry into snail exclosures has been added. These solid-walled exclosures are very small (less than 1 acre) and are extremely sensitive because they may contain the only wild populations of certain snail species.

#### **§ 13-209-4.1 Forfeiture.**

A provision of forfeiture has been added to provide consistency with other administrative rules.

#### **§13-209-4.2 Restricted entry.**

Access restrictions are proposed for 'Ahihi-Kina'ū to prevent the trampling of sensitive cultural sites and anchialine pools. The closure also improves the enforcement of no-fishing regulations. The Board has approved 2-year closures of this same area since May 2008. This closure was also recommended by the 'Ahihi Kina'ū/Keoneo'io Advisory Group in 2004 and the Natural Area Reserves System Commission in 2005. The proposed closure would not change the boundaries of the area that has already been closed since 2008. A new closure is also proposed for Mt. Ka'ala NAR to reduce trampling of very rare plant species by visitors that wander off-trail. The boardwalk trail would remain open, and visitors would be instructed to stay on the trail.

#### **§ 13-209-4.3 Closing of areas.**

An amendment is requested to establish how closures or access restrictions can occur and the criteria needed for these restrictions. These amendments are consistent with the closure process in § 13-104-7.5 Rules Regulating Activity in Forest Reserves, effective Jan 16, 2021.

#### **§ 13-209-5 Special use permits.**

An amendment is requested to allow permits to be issued for more than one year. This would reduce the effort to process renewals for longer-term activities such as research projects.

**§13-209-5.6 Parking fees.**

The parking fees are proposed to be consistent with the \$10.00 non-resident fees in State Parks, per § 13-146 (Hawaii State Park System). Another provision would allow the Department to collect non-resident parking fees in Keoneo'io, subject to finalizing the proposed designation of that area as a part of the 'Ahihi-Kina'ū NAR. The Department seeks to manage the parking in that area, create designated stalls, and reduce overcrowding. Parking fees would fund the improved management of the NARS by being deposited into the Endangered Species Trust Fund. The Legislature amended §195D-31 in Act 93, SLH 2019 to specifically allow fees and assessments charged for the use of public land and waters designated for the fund to be an allowable source of funding for the Endangered Species Trust Fund.

**§ 13-209-5.8 Public parking and § 13-209-5.9 Removal of vehicles**

This amendment clarifies the process to demonstrate that a vehicle is permitted to park, and how the Department removes vehicles that are out of compliance.

**§ 13-209-6.1-6.6 Commercial Activity Permits.**

These proposed amendments are based on Subchapter 6 of Hawaii Administrative Rules §13-130 for Na Ala Hele (Trails and Access program). Staff has observed ongoing unpermitted commercial activity in many NARS. Enforcement of unpermitted commercial activity has been chronically difficult. While some of the activity is detrimental, there is also the opportunity for managed commercial activity to be beneficial to the NARS by providing educational opportunities and a source of revenue for the NARS, following the model provided by Na Ala Hele.

**CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:**

This action before the Board represents approval to conduct public hearings and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS relating to environmental impact statements.

**RECOMMENDATION:** That the Board:

- 1) Grant permission to conduct public hearings regarding amendments and compilation of Title 13, Chapter 209, Hawaii Administrative Rules: Rules Regulating Activities Within Natural Area Reserves;
- 2) Authorize the Chairperson to set the dates and times for the public hearings and;
- 3) Authorize the Chairperson to appoint a hearing master for the public hearings.

Respectfully Submitted,

for *Robert Hauff*

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DAVID G. SMITH, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

*Suzanne D. Case*

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SUZANNE D. CASE, Chairperson

Attachment

DEPARTMENT OF LAND AND NATURAL RESOURCES  
TITLE 13  
SUBTITLE 9 NATURAL AREA RESERVES SYSTEM  
CHAPTER 209  
RULES REGULATING ACTIVITIES WITHIN NATURAL AREA RESERVES

- § 13-209-1 Purpose and applicability
- § 13-209-2 Definitions
- § 13-209-3 Permitted activities
- § 13-209-4 Prohibited activities
- § 13-209-4.1 Forfeiture
- § 13-209-4.2 Restricted entry
- § 13-209-4.3 Closing of areas
- § 13-209-4.4 Visiting hours
- § 13-209-4.5 - 13-209-4.9 (Reserved)
- § 13-209-5 Special-use permits
- § 13-209-5.1 - 13-209-5.4 (Reserved)
- § 13-209-5.5 Applications for special-use permits
- § 13-209-5.6 Parking fees
- § 13-209-5.7 Public parking closure hours
- § 13-209-5.8 Public parking
- § 13-209-5.9 Removal of vehicles
- § 13-209-6 Commercial activity permits
- § 13-209-6.1 General commercial activity permit provisions
- § 13-209-6.2 Commercial activity permit applications
- § 13-209-6.3 Commercial activity permit criteria
- § 13-209-6.4 Commercial activity permit cancellation, revocation, or termination
- § 13-209-6.5 Commercial activity permit fees
- § 13-209-6.6 Commercial use permits, public auction
- § 13-209-6.7 - 13-209-6.9 (Reserved)
- § 13-209-6.7 Penalty

Historical Note: Chapter 209 of Title 13, Administrative Rules, is based substantially upon Regulation 10 of the Administration of the Department of Land and Natural Resources entitled “Regulating and Prohibiting Activities within Natural Area Reserves Including Provisions for Excepted-Use Activities by Permit and Penalties for Violation of the Regulation.” [Eff 5/20/79; R 6/29/81]

**§13-209-1 Purpose and applicability.** (a) The purpose of these rules is to regulate activity within natural area reserves established pursuant to section 195-4, Hawaii Revised Statutes. (b) These rules shall apply to all persons entering the boundaries of a natural area reserve. [Eff 6/29/81] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

**§13-209-2 Definitions.** As used in these rules, unless the context requires otherwise:  
“Board” means the board of land and natural resources.  
“Commission” means the natural area reserves system commission.

“Department” means the department of land and natural resources.

“Game mammals and birds” means those animals that have been designated as such by sections 191-8 and 191-19, Hawaii Revised Statutes, and by administrative rules of the department.

“Natural area reserve” means those State lands that have been designated as part of the Hawaii natural area reserves system by the department pursuant to section 195-4, Hawaii Revised Statutes.

“Commercial activity” means ~~the use of or activity on state lands for which compensation is received and by any person for goods or services or both rendered to consumers or participants in that use or activity. Commercial activities include activities whose base of operations are outside the boundaries of the natural area reserve, or provide transportation to or from the natural area reserve.~~ to engage in any action or attempt to engage in any action designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic, or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes, or the use of liability waivers to provide goods or services. Commercial activity includes activities whose base of operations is outside the boundaries of the program trail or access, but that rent equipment or livestock for use in a natural area reserve or provide transportation to or from a Natural Area Reserve. Commercial activity includes the operation of vehicles licensed or permitted as motor carriers of passengers or property for compensation by the Public Utilities Commission to, from, or within a NAR except for delivery or other service vehicles contracted by the state.

“Compensation” includes but is not limited to, monetary fees, barter, or services in-kind.

“Motorized vehicle” means a motor vehicle of any type, including, but not limited to, automobiles, trucks, off-highway vehicles such as all-terrain vehicles, motorcycles, motorbikes, go-carts, motorcycles, motor scooters, mopeds, electric bicycles, and dune buggies whether the vehicle is licensed or unlicensed.

“Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a roadway or highway, including mopeds, but excluding bicycles and devices other than bicycles moved by human power.

[Eff 6/29/81; am 12/9/02; am 7/3/03] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

**§13-209-3 Permitted activities.** Hiking and nature study of group size of ten or less are permitted except where restricted pursuant to sections 13-209-4.5 and 13-209-4.6. Hunting is a permitted activity pursuant to hunting rules of the department. [Eff 6/29/81; am 1/26/07] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

**§13-209-4 Prohibited activities.** The following activities are prohibited within a natural area reserve:

- (1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;
- (2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department, leashed dogs on designated trails in Pahole natural area reserve, and service animals trained guide dogs accompanying their

handlers. Any animal, such as a dog or a cat, found roaming and loose in a natural area reserve may be impounded or destroyed;

- (3) To remove, damage, or disturb any geological or paleontological features or substances, including but not limited to drilling, placement or installation of hardware or fasteners;
- (4) To remove, damage, or disturb any historic or prehistoric remains;
- (5) To remove, damage, or disturb any notice, marker, or structure;
- (6) To engage in any construction or improvement;
- (7) To engage in any camping activity or to establish a temporary or permanent residence;
- (8) To start or maintain a fire, including cigarettes;
- (9) To litter, or to deposit refuse or any other substance;
- (10) To operate any motorized or unmotorized land vehicle or air conveyance of any shape or form in any area, including roads or trails, not designated for its use;
- (11) To operate any motorized water vehicle of any shape or form in freshwater environments, including bogs, ponds, and streams, ~~or marine waters~~, except as otherwise provided in the boating rules of the department. In Ahihi-Kinau natural area reserve, no person shall operate, anchor or moor any vessel equipped with mechanical means of propulsion on or in the Ahihi-Kinau ocean waters unless (1) the person is engaged in rescue or law enforcement operations; (2) an emergency arises which requires that such action be taken to prevent loss of life, injury to persons or damage to property; or (3) the person is operating, anchoring or mooring a vessel equipped with mechanical means of propulsion in or on the waters in accordance with the provisions of a permit issued by the Chairperson of the Board of Land and Natural Resources. Notwithstanding any boating rules of the department, it is prohibited to launch or land any boats, including sail boats, row boats, canoes and kayaks within portions of Ahihi-Kinau natural area reserve as showing in Exhibit 1. This section shall not apply to surf boards and body boards.
- (12) To enter into, place any vessel or material in or on, or otherwise disturb a lake or pond;
- (13) To engage in commercial activities of any kind in a natural area reserve without a written special-use permit from the board or its authorized representative;
- (14) To have or possess the following tools, equipment, or implements: fishing gear or devices within portions of Ahihi-Kinau natural area reserve as shown in Exhibit 1, including but not limited to any hook-and-line, rod, reel, spear, trap, net, crowbar, or other device that may be used for the taking, injuring, or killing of marine life; cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life; and hunting gear or tools that may be used for the taking, injuring, or killing of wildlife, except as permitted by the hunting rules of the department;
- (15) To hike, conduct nature study, or conduct any activity with a group larger than ten in size;
- (16) To be present in an area closed pursuant to section 13-209-4.5 or after visiting hours established pursuant to section 13-209-4.6;

- (17) To anchor any motorized or nonmotorized water vehicle of any shape or form in the marine waters of Ahihi-Kinohiwa natural area reserve;
- (18) To enter into any cave, as defined in section 6D-1, Hawaii Revised Statutes, or any portion thereof;
- (19) To conduct any other activity inconsistent with the purpose and intent of the natural area reserves system;
- (20) To use or possess narcotics or drugs except as provided by Federal or State laws. No person shall enter or remain within the premises when under the influence of alcohol or illegal narcotics or drugs;
- (21) To use or possess alcohol, except with the written permission of the board or its authorized representative;
- (22) To feed animals or leave any food that may be consumed by animals;
- (23) To operate an unmanned aircraft in or above natural area reserves.
- (24) To enter into any solid-walled enclosures with signage indicating that the area is protected for snails.

[Eff 6/29/81; am 12/9/02; am 7/3/03; am 1/26/07; am ](Auth: HRS § 195-5) (Imp: HRS § 195-5)

**§ 13-209-4.1 Forfeiture.** Any substance, material, device, equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, Hawaii Revised Statutes;

**§13-209-4.2 Restricted entry.** It is prohibited for any person to land upon, enter or attempt to enter, or remain in any natural area reserve identified in Exhibit 2, "List of RESTRICTED natural area reserves", located at the end of this chapter and by reference made a part hereof, except as authorized in Exhibit 2 or as authorized by permit by the board or its authorized representative.

**§ 13-209-4.53 Closing of areas.** (a) The board or its authorized representative, with the approval of the commission, may close or restrict the public use of all or any portion of a natural area reserve for up to two years, when deemed necessary by the commission for the protection of the natural, geological, or cultural resources of the area or the safety and welfare of persons or property, by the posting of appropriate signs indicating the duration, extent, and scope of closure. Closures may be renewed with the approval of the board or its authorized representative and the commission. All persons shall observe and abide by the officially posted signs designating closed areas, in the event of an emergency or when deemed necessary for:

- (1) The protection of the biological, geological, or cultural resources of the area;
- (2) Health, safety, or welfare reasons;
- (3) Management activities, by the posting of appropriate signs indicating the duration, extent, and scope of closure.

(b) The chairperson is authorized to effect a given closure or restriction under subsection (a) for a period of not more than ninety days. The board is authorized to affect a closure or restriction for any period as deemed necessary to accommodate the condition or conditions indicated under subsection (a).

(c) Vehicles left unattended in closed areas may be impounded by the board or its authorized representative at any time.



(d) All impounded vehicles shall be towed to a place of storage. Towing, storage and other related 13-146-7 costs shall be assessed pursuant to section 290-11, HRS. [Eff 1/26/07] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

**§ 13-209-4.64 Visiting hours.** The board or its authorized representative, with the approval of the commission, may establish a reasonable schedule of visiting hours for all or portions of a natural area reserve by posting appropriate signs indicating the hours during which the natural area reserve may be accessed. All persons shall observe and abide by the officially posted signs designating visiting hours. [Eff: 1/26/07] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§§ 13-209-4.5 - 13-209-4.9 (Reserved)

**§ 13-209-5 Special use permits.** (a) The board or its authorized representative, with the approval of the commission or its authorized representative, may issue permits to conduct activities otherwise prohibited by section 13-209-4 for research, education, management, or for any other purpose consistent with chapter 195, Hawaii Revised Statutes.

~~(b) No permit may be valid for more than one year from date of issuance. The board may waive this restriction for permits where the board determines such a waiver to be in the best interest of the State.~~

~~(e)~~(b) All special-use permits shall be subject to standard conditions, as approved by the board, including but not limited to the following:

- (1) The permittee shall adhere to specifications given in the permit application;
- (2) Disturbance of vegetation and wildlife shall be avoided as much as possible;
- (3) Precautions shall be taken to prevent introductions of plants or animals not naturally present in the area. The permittee is responsible for making sure that participants' clothes, equipment, and vehicles are free of seeds or dirt to lessen the chance of introducing any non-native plants or soil animals. Should an infestation develop attributable to the permittee, the permittee is responsible for eradication by methods specified by the department;
- (4) This permit is not transferable;
- (5) This permit does not exempt the permittee from complying with any other applicable rule or statute;
- (6) The State of Hawaii shall be released and held harmless from any and all liability for injuries or death, or damage or loss of property however occurring during any activity related to this permit.

~~(d)~~(c) The board or its authorized representative may attach special conditions on the special-use permit, including but not limited to reporting requirements, limitations on the size of groups or the length of time for which the permit is valid. Failure to comply with any of these conditions shall render a permit void.

~~(e)~~(d) All permittees shall carry the permit with them at all times while in the reserve and shall, upon request, show the permit to any law enforcement officer or the board or its authorized representative.

~~(f)~~(e) Permits are not transferable. If the permittee is a partnership, joint venture, or corporation, the sale or transfer of 25 percent or more of ownership interest or stocks by dissolution, merger, or any other means, shall be deemed a transfer for purposes of this

subsection and subject to the right of the department to terminate this permit effective the date of the sale or transfer.

~~(g)~~(f) The board or its authorized representative may revoke or cancel a permit without prior notice when an emergency is declared by the department or other proper authority or when the special-use poses an immediate threat to the health, safety, and welfare of the public or natural, geological, or cultural resources of the reserve.

~~(h)~~(g) The board or its authorized representative may revoke or cancel any permit with thirty days written notice:

- (1) For any infraction of the terms and conditions of the permit;
- (2) Upon a finding that the special-use threatens to damage the integrity or condition of the natural, geological, or cultural resources in the reserve;
- (3) Upon a finding that the special-use poses a threat to the health, safety, or welfare of the general public or otherwise negatively impacts the general public's use and enjoyment of the reserve; or
- (4) Upon closure of a reserve pursuant to section 13-209-4.5.

~~(i)~~(h) The provisions of this section shall not exempt the applicant from complying with any other applicable rule or statute.

[Eff 6/29/81; am 1/26/07; am ] (Auth: HRS § 195-5)(Imp: HRS § 195-5)

#### §§ 13-209-5.1 - 13-209-5.4 (Reserved)

**§ 13-209-5.5 Applications for special-use permits.** (a) All applications for special-use permits shall be submitted in writing to the board or its authorized representative on the form prescribed by the department. The application shall contain the following information:

- (1) Name of applicant, and if relevant, affiliation and title;
- (2) Contact information, including name of primary contact, mailing address, phone number, and if available, email address;
- (3) The period of time for which the permit is requested, not to exceed one year unless seeking a waiver pursuant to section 13-209-5(b);
- (4) The reserve(s) involved;
- (5) A map illustrating the reserve and the location within the reserve of the proposed special-use;
- (6) A description of the proposed special-use;
- (7) A discussion of how the proposed special-use satisfies subsections (b)(1) through (b)(6);
- (8) An assessment of the potential environmental impact the special-use may have on the reserve or the surrounding area;
- (9) Signature of the applicant;
- (10) Any other information as determined by the department.

(b) In evaluating the merits of an application for a special-use permit, the board or its authorized representative shall apply the following criteria:

- (1) The proposed special-use cannot be conducted elsewhere;
- (2) The proposed special-use is consistent with the purpose and objectives of the natural area reserve system;
- (3) The proposed special-use is consistent with the management plan developed for the reserve;

- (4) The proposed special-use provides a benefit (direct or indirect) to the natural area reserve system or to the individual reserve(s) or both;
- (5) The proposed special-use will not damage or threaten to damage the integrity or condition of the natural, geological, or cultural resources in the natural area reserve and adjacent area or region;
- (6) The proposed special-use complies with provisions and guidelines contained in Chapter 205A, Hawaii Revised Statutes, entitled "Coastal Zone Management", where applicable; and
- (7) The applicant shall have complied with, or be in compliance with, the conditions of any previously approved permit.

(c) The applicant shall have the burden of demonstrating that the proposed special-use is consistent with the criteria in subsection (b).

(d) The board or its authorized representative may hold a public hearing on an application where determined by the chairperson that the scope of the proposed special-use or the public interest requires a public hearing on the application. Notice of the hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper in the county where the natural area reserve is located.

(e) If within two hundred seventy days after the department's acceptance of a completed application, the board or its authorized representative shall fail to render a decision thereon, the application for a special-use permit shall be automatically approved with the standard conditions outlined in section 13-209-5(c), provided that the board may revoke this approval pursuant to section 13-209-5(g) and (h). The two-hundred-seventy-day time period provided shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance. The two-hundred-seventy-day time period for decision may be extended for another one hundred eighty days at the request of the applicant to give the board additional time to review and make a decision on the application.

[Eff 1/26/07; am ] (Auth: HRS §§ 195-5, 91-13.5) (Imp: HRS §§ 195-5, 91-13.5)

**§13-209-5.6 Parking fees.** (a) The fee for parking a vehicle in the Ahihi-Kinau natural area reserve at the Kanahena lot, and the Keoneoio lot, subject to designation as part of the natural area reserve, shown in Exhibit "43", in a space designated for such use shall be:

Nonresidents: ~~\$5.00~~ 10.00 per vehicle

Residents: No charge

(b) For purposes of this section, the term "resident" means a resident of the State with a valid State of Hawaii identification card or State of Hawaii driver's license.

(c) All fees collected shall be deposited into the ~~Natural Area Reserve Special~~ Endangered Species Trust Fund. [Eff 9/8/17 ] (Auth: HRS §§ 195-5, 195-9) (Imp: HRS §§ 195-5, 195-9)

**§ 13-209-5.7 Public parking closure hours.** Ahihi-Kinau natural area reserve parking areas will be closed daily between 8:00 p.m. and 5:00 a.m., including holidays. [Eff 9/8/17] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

**§ 13-209-5.8 Public parking.** As may be prescribed from time to time by the department, no person shall use the Kanahena and Keoneoio lot, shown in Exhibit "43", without payment of

parking fees and charges and may only park in areas designated by the department. Within these parking lots shown in Exhibit 3, all vehicles, both resident and non-resident, must have and clearly display a parking pass on the driver's side dashboard area so that it can be read from the outside of the vehicle. Parking passes can be obtained from automated meters or from the Department. No person shall use a parking area within the Ahihi-Kinau natural area reserve when the parking area is closed, except as expressly permitted in writing by the department. [Eff 9/8/17] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

**§ 13-209-5.9 Removal of vehicles.** (a) The department may detain, tow, move, or cause to be moved to an impounding area, at the owner's risk and expense and without liability for any damage that may result, any motor vehicle:

- (1) For nonpayment of parking charges, or failure to clearly display a parking permit on the driver's side dashboard when a vehicle is parked in a vehicular parking area operated by the department or authorized representative in the Ahihi-Kinau natural area reserve; or
- (2) Which has been parked continuously anywhere ~~in a parking area operated by the department or authorized representative~~ in the Ahihi-Kinau natural area reserve for a period exceeding the posted time limits, except where prior arrangements have been made therefor.

(b) The department shall have the authority to detain, tow, move, or cause to be moved any vehicle when the position or location of the vehicle in a parking lot creates a nuisance or a hazard; provided, that any detention, towing, or moving, done or caused to be done by the department or authorized representative, of any vehicle legally parked, shall not be at the owner's risk and expense. [Eff 9/8/17] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

**§ 13-209-6 Commercial Activity Permits.** (a) Commercial activity is subject to the following hierarchy of priorities relating to activity on public lands under the jurisdiction of the department:

- (1) Protection and stewardship of natural and cultural resources is the highest priority;
  - (2) Access for general public activity in a manner that does not damage these resources is the second priority; and
  - (3) Access for commercial activity in a manner that does not damage these resources or compromise the general public's activity is the third priority.
- (b) Commercial activity at a NAR or access is strictly prohibited without a commercial activity permit.

**§ 13-209-6.1 General commercial activity permit provisions.** All commercial activity permits shall be subject to the following provisions:

- (1) Permits shall not be transferable or assignable;
- (2) The person to whom a permit is issued shall be responsible for all permit conditions, and compliance with all rules, regulations, and laws applicable to the use of the NAR;
- (3) Permits shall not be issued to a person under eighteen years of age;
- (4) Permittee shall, upon request, show the permit to any law enforcement officer or authorized representative of the department;

- (5) Any other restrictions or conditions may be imposed on the permittee or permitted use to protect the integrity, condition, naturalness, beauty, and safety of, or access of the general public to the NARs, or which furthers the purposes of the Natural Area Reserves program. Such restrictions may include, but are not limited to, restrictions on the number of persons, types of transport, length of stay, number of trips, and seasonal or weather restrictions; and
- (6) The issuance of a permit shall not constitute a vested property interest but is a privilege granted for the use of a program trail or access for a specified activity and time period.

**§ 13-209-6.2 Commercial activity permit applications.** (a) Permit applications shall be available at the district offices of the division during office hours. Completed applications shall be filed at the branch offices of the division with any applicable permit fee. The Division may also establish an online application process.

**§ 13-209-6.3 Commercial activity permit criteria.** (a) A commercial activity permit may be granted only when the commercial activity is consistent with the hierarchy of priorities as provided in section 13-130-46 (a) and is otherwise consistent with the purposes of the Natural Area Reserves program. (b) Specifically, but not in limitation of the provisions of subsection (a), commercial activity permit applications may be denied when:

- (1) The proposed activity would be detrimental to the integrity, condition, naturalness, or beauty of a NAR or access or the surrounding area;
- (2) The proposed activity would be detrimental to the safety of NAR users;
- (3) The proposed activity would compromise the quality and nature of the expected experience provided by a NAR of its classification;
- (4) The size or intensity of the proposed activity would exceed the limits of acceptable change of a NAR, site, or facilities;
- (5) The size, intensity, or nature of the proposed activity would diminish the availability of a NAR for use by the general public;
- (6) Repairs or improvements are being made to a NAR or facility;
- (7) The NAR or facility for the proposed activity will be in use by other permittees or a government agency;
- (8) The applicant has been found by the department to have violated permit conditions or to have been in violation of the provisions of this chapter within one year prior to the date of application;
- (9) An emergency is declared by an authorized representative or other proper authority;
- (10) The proposed commercial activity is not allowed at the NAR or portion thereof, under the terms of an agreement with a private landowner or another government agency concerning the use of the NAR or portion thereof; or
- (11) Any other basis for denial exists that is provided for in these rules.

**§ 13-209-6.4 Commercial activity permit cancellation, revocation, or termination.** The department may cancel, revoke, or terminate a permit without notice and hearing when:

- (1) An emergency is declared by the department or other proper authority;
- (2) A permittee violates permit conditions or provisions of this chapter;

- (3) The permitted activity damages, threatens serious damage to the integrity or condition of the NAR or to the surrounding environment, or threatens the safety of NAR users; or
- (4) Fees are not paid when required.

**§ 13-209-6.5 Commercial activity permit fees.** (a) Persons applying for a commercial activity permit may be charged an application fee at the time of filing the application to defray the cost of processing, issuing, and administering commercial activity permits. The amount of the fee shall be set from time to time by the department. The application fee shall be paid when the application is filed.

(b) A commercial activity fee shall be charged pursuant to the provisions established in a commercial activity permit. The activity fee is for the purpose of defraying the costs of maintaining NARs and administering the Natural Area Reserves program incurred by the State as a result of commercial activity permit activities; to provide a fair return to the government for the opportunity of the permittee to make a profit from the use of public resources; and to compensate the State for degradation, depletion, or consumption of public resources and use of manpower and materials.

**§ 13-209-6.6 Commercial use permits; public auction.** (a) Unless otherwise provided by law, all commercial use permits issued by the department under this chapter may be made available at public auction under sealed bid after public notice.

**§§ 13-209-6.7 - 13-209-6.9 (Reserved)**

**§ 13-209-6.7 Penalty.** Any person violating any of the provisions of these rules shall be penalized as provided in section 195-8, Hawaii Revised Statutes. [Eff 6/29/81] (Auth: HRS § 195-5) (Imp: HRS § 195-8)

Exhibit 1: Ahihi Kinau Natural Area Reserve

Ahihi Kinau Natural Area Reserve, Maui

Chapter 209, Exhibit 1

State of Hawaii  
DLNR, DOFAW

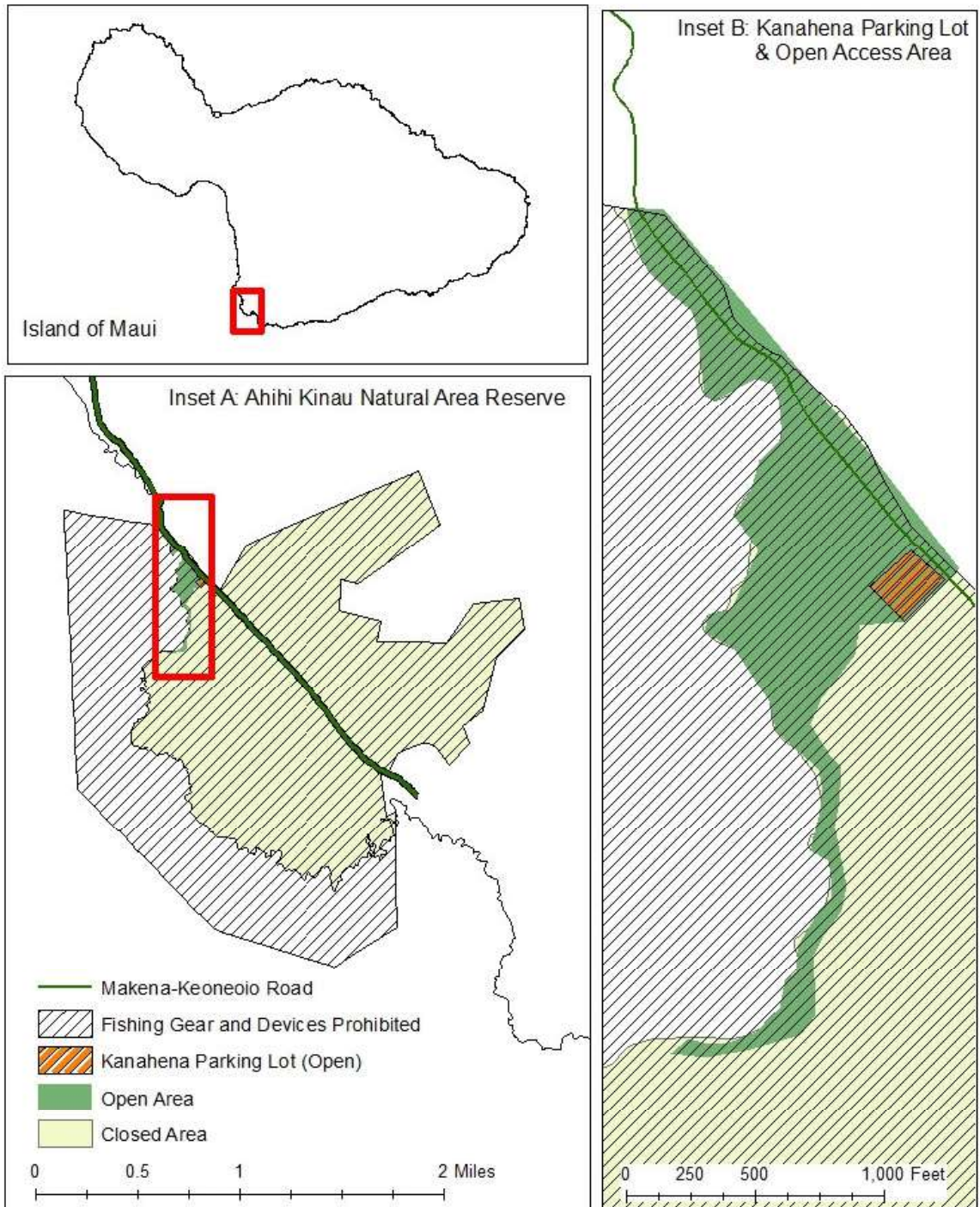


Exhibit 2: List of Restricted Natural Area Reserves

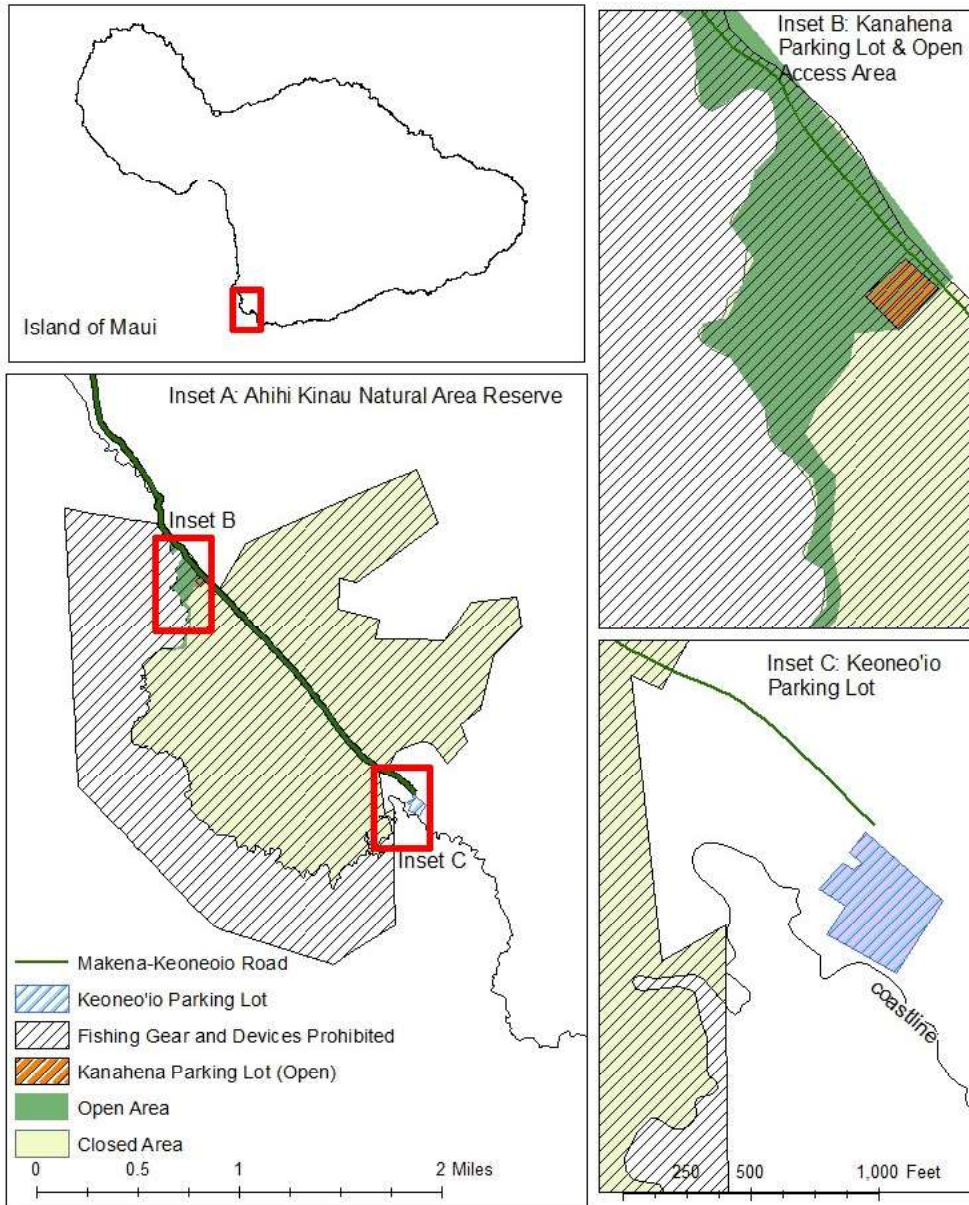
<u>Name</u>	<u>County</u>	<u>Island</u>	<u>Tax Map Key</u>	<u>Restrictions</u>
<u>Ahihi</u> <u>Kinau</u>	<u>Maui</u>	<u>Maui</u>	<u>2-1-4:073</u> <u>(Portions) and 2-1-</u> <u>004:113</u>	<u>See map in Exhibit 1.</u>
<u>Mount</u> <u>Kaala</u>	<u>Honolulu</u>	<u>Oahu</u>	<u>8-4-2:065</u> <u>(Portions)</u>	<u>Within summit plateau, access</u> <u>is restricted to marked trails</u> <u>and boardwalks.</u>

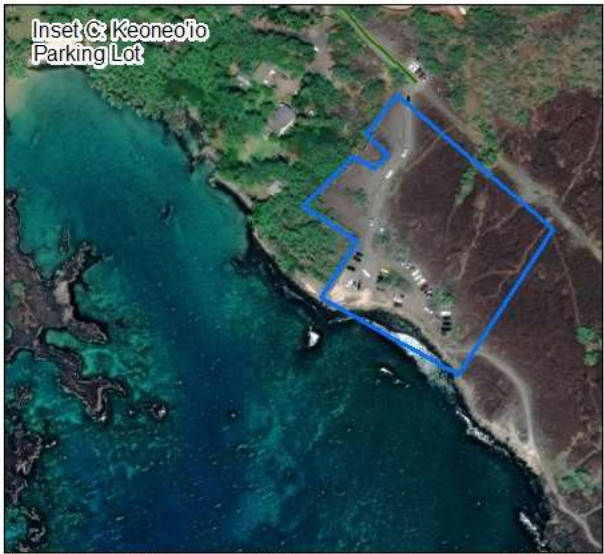


### Exhibit 3: Kanahena and Keoneoio Parking Areas

#### Ahihi Kinau Natural Area Reserve, Maui

State of Hawaii  
DLNR, DOFAW





- Makena-Keoneoio Road
- Keoneo'io Parking Lot
- Kanahena Parking Lot (Open)

