

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

May 10, 2024

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

Land Board Members:

REQUEST FOR FINAL APPROVAL TO ADOPT PROPOSED
AMENDMENTS TO AND COMPILATION OF HAWAII ADMINISTRATIVE
RULES CHAPTER 13-109 (RULES FOR ESTABLISHING FOREST
STEWARDSHIP).

The proposed amendments can be reviewed online via the Lieutenant Governor's Office website at, <https://dlnr.hawaii.gov/wp-content/uploads/2024/01/Chapter-13-109-HAR-Draft-2024.pdf>, or in person at any Division of Forestry and Wildlife (DOFAW) district office between 8:00 a.m. and 3:30 p.m., Monday through Friday, except for State holidays.

PURPOSE

This submittal requests the Board of Land and Natural Resources (Board) approval to adopt proposed amendments to and compilation of Hawai'i Administrative Rules (HAR) Chapter 13-109, Rules for Establishing Forest Stewardship.

Chapter 13-109, HAR, was adopted on January 8, 1999, to provide rules to implement Chapter 195F, Hawaii Revised Statutes (HRS), which authorizes the Board to establish a forest stewardship program (FSP) to provide technical advice and financial assistance to applicants on a cost-share basis to promote forest stewardship and restoration by managing, protecting, and restoring critical natural resources on private forest or formerly forested property. It has not previously been amended.

The purpose of the proposed amendments to the existing rules (which are attached as **Exhibit C**) is to (1) ensure consistency with recent amendments to Chapter 195F, HRS; (2) provide greater flexibility for landowners by allowing applicants to match State-provided cost-share support with non-state financial assistance programs, and (3) update definitions, management practices, and language related to State, Federal, and County forestry incentive programs. Additionally, the Division of Forestry and Wildlife (DOFAW) has added other non-substantive and stylistic amendments for clarity and

consistency with other related provisions. A detailed description of the proposed amendments appears in DOFAW's August 11, 2023, Board submittal (Item C-3), which is available online at <https://dlnr.hawaii.gov/wp-content/uploads/2023/08/C-3.pdf>.

BACKGROUND

66% of Hawai'i's 1,748,000 acres of forestland are privately owned and managed. The State of Hawai'i Forest Stewardship Program (FSP), which became effective in July 1991 through the passage of Act 327, Session Laws of Hawai'i 1991, authorized the Department of Land and Natural Resources (DLNR) to provide state funds to technically and financially assist private landowners and managers on a cost-share basis to protect, manage, and restore essential forest resources.

The FSP is administered by DLNR via DOFAW and focuses on the following objectives: forest productivity (timber and non-timber forest resources); native ecosystem health and biodiversity; watershed protection and management; wildlife habitat conservation and restoration; and recreation. The State's FSP is aligned with and supported by the National Forest Stewardship Program, authorized by the Cooperative Forestry Assistance Act of 1978 and administered by the U.S. Department of Agriculture (USDA) Forest Service. Both state and federal programs provide technical assistance to private forest owners to encourage and enable active, long-term forest management, with a focus on the development of comprehensive management plans that provide landowners with the information they need to manage their forests for a variety of products, ecosystem services, and public benefits.

The Board approved DOFAW's request to initiate rule-making proceedings, including its request to hold a hybrid, statewide public rulemaking hearing on August 11, 2023, according to HRS chapter 91 to amend and compile HAR chapter 13-109, Rules for Establishing Forest Stewardship. The Small Business Regulatory Review Board approved moving the proposed amendments to a public hearing on September 27, 2023.

SUMMARY OF PUBLIC HEARING PROCEEDINGS

Notice of a hybrid, statewide public hearing on March 13, 2024, was published on February 11, 2024, in the Sunday edition of the Honolulu Star-Advertiser. The DLNR also issued a press release on February 28, 2024, regarding the hybrid statewide public hearing. The DLNR held a hybrid statewide public hearing via Zoom, with an in-person host site at the DLNR Boardroom on O'ahu¹ on March 13, 2024, at 5:30 p.m.² A summary of the rules and an opportunity to comment was provided at the following link:

¹ The DLNR Boardroom is located at 1151 Punchbowl St., Room 132 (Kalanimoku Building), Honolulu, HI 96813.

² The format of the public hearing was a hybrid virtual/in-person format with an in-person host site for those wishing to provide in-person testimony on Oahu as well as a virtual option via Zoom. The in-person site had a TV, speakers, microphone, and camera setup and was logged into the Zoom. The Zoom public hearing officer provided a presentation on the proposed rules and then collected testimony.

<https://dlnr.hawaii.gov/forestry/lap/fsp/2024rules/>, and written testimony was accepted until March 29, 2024. Upon closing the public comment period, the testimony was compiled, reviewed, analyzed, and summarized.

Four individuals provided testimony on the proposed rule amendments. Two individuals provided oral testimony in person at the public meeting, one of whom also provided written testimony, and the DLNR received written comments from two people. Of the four testifiers, three supported the proposed amendments, and one provided a comment.

Testimony regarding the proposed amendments was in support of increased cost-share support for 1) the development of FSP management plans, 2) allowing non-timber forests in the program, 3) inclusion of leasehold lands, and 4) greater flexibility for allowing applicants to match state FSP cost-share support with non-state financial assistance programs. One individual provided comments in support of gathering rights on public and private lands. There was no testimony opposing the proposed rules. The hearing officer's report and minutes from the public meeting analyze the public testimony and are attached as **Exhibit A**.

KA PA'AKAI ANALYSIS

On September 11, 2000, the Hawaii Supreme Court (Court) ruled in *Ka Pa'akai O Ka 'Āina vs. Land Use Commission, State of Hawai'i (Ka Pa'akai)*³ that State and government agencies must preserve and protect traditional and customary Native Hawaiian rights, and an appropriate analytical framework was needed to assess whether these rights were unduly violated.⁴ The Court developed a three-pronged test, dubbed the "Ka Pa'akai Analysis," triggered when government agencies consider proposed uses of land and water resources that may impact the exercise of Native Hawaiian traditional and customary rights.

On March 15, 2023, the Court ruled in *Flores-Case 'Ohana v. University of Hawai'i*⁵ that the obligation described in *Ka Pa'akai* not only applied to contested case hearings but also applied to rulemaking actions.⁶ In doing so, the Court provided a modified Ka

³ [Ka Pa'akai o ka 'Āina v. Land Use Comm'n, 94 Hawai'i 31, 7 P.3d 1068 \(2000\)](#).

⁴ "Following up on [[Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 79 Hawai'i 425, 903 P.2d 1246 \(1995\) \(PASH\)](#)], we recognized in *Ka Pa'akai* that in contested case hearings, the State and its agencies have an 'affirmative duty . . . to preserve and protect traditional and customary native Hawaiian rights' and provided a framework 'to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests.'" [Flores-Case 'Ohana v. Univ. of Haw., 153 Hawai'i 76, 83, 526 P.3d 601, 608 \(2023\)](#) (quoting [Ka Pa'akai, 94 Hawai'i at 45–47, 7 P.3d at 1082–84](#)).

⁵ [Flores-Case 'Ohana v. Univ. of Haw., 153 Hawai'i 76, 526 P.3d 601 \(2023\)](#).

⁶ "In sum, the *Ka Pa'akai* framework applies to administrative rulemaking in addition to contested case hearings. Requiring the State and its agencies to consider Native Hawaiian traditional and customary rights in these contexts 'effectuate[s] the State's obligation to protect native Hawaiian customary and

Pa‘akai Analysis for rulemaking actions. Pursuant to the modified Ka Pa‘akai Analysis, before adopting rules, agencies must consider the following:

- (1) The identity and scope of Native Hawaiian traditional and customary rights affected by the rule, if any,
- (2) The extent to which Native Hawaiian traditional and customary rights will be affected or impaired by the rule, and
- (3) Whether the proposed rules reasonably protect Native Hawaiian traditional and customary rights, if found to exist, as balanced with the State’s regulatory right.

Flores-Case ‘Ohana, 153 Hawai‘i at 85, 526 P.3d at 611 (footnote omitted) (quoting another source) (internal quotation marks omitted) (formatting altered).

Subsequently, the Department has provided the following analysis on this proposal’s effects on Native Hawaiian traditional and customary practices:

- 1) Identity and Scope of Native Hawaiian Traditional and Customary Rights Affected by the Rule, if Any.** The current proposal amends the existing administrative rules for a voluntary technical and financial assistance program for private landowners. The overall objective of this FSP program is the restoration and management of forests, which may enhance opportunities for traditional and customary practices related to forest gathering and provide other cultural benefits such as watershed protection and prevention of erosion into streams and the ocean. In general, private lands may be included in the program that are potentially used for traditional and customary practices, such as gathering forest plants for various cultural uses. However, specific land areas for future FSP projects are unknown, depending on which eligible landowners eventually apply to participate in the program. The proposed amendments to program rules outline the essential requirements and process for landowner participation. They do not, in and of themselves, directly affect any known Native Hawaiian traditional and customary practices.⁷ During the public comment period, testimony emphasized protecting traditional and customary practices. However, no specific traditional and customary practices were identified as affected by the proposed amendments to Chapter 13-109, HAR.

- 2) The Extent to Which Native Hawaiian Traditional and Customary Rights Will Be Affected or Impaired by the Rule.** No Native Hawaiian traditional and

traditional practices[.]” [Flores-Case ‘Ohana](#), 153 Hawai‘i at 84, 526 P.3d at 609 (quoting [Ka Pa‘akai](#), 94 Hawai‘i at 47, 7 P.3d at 1084).

⁷ “When undertaking this analysis, the agency is not required to ‘negative any and all native Hawaiian rights claims regardless of how implausible the claimed right may be.” [Flores-Case ‘Ohana](#), 153 Hawai‘i at 85–86, 526 P.3d at 610–11 (footnote omitted) (quoting [State v. Hanapi](#), 89 Hawai‘i 177, 184, 970 P.2d 485, 492 (1998)).

customary rights or practices were identified or implicated as directly affected by the proposal.⁸

- 3) Reasonable Protections for Native Hawaiian Traditional and Customary Rights, if Found to Exist, as Balanced with the State’s Own Regulatory Rights.** Notwithstanding the lack of Native Hawaiian traditional and customary rights or practices identified or implicated that are directly affected by the proposal, DOFAW notes that the forest stewardship plans developed by private landowners who participate in the FSP program are required to include information about the natural and cultural resources and history of the proposed project area. Project proposals and plans are reviewed case-by-case by the forest stewardship advisory committee, which includes Native Hawaiian interests, at its public meetings. Additionally, plans selected for state implementation funding are brought to the Board for approval of a forest stewardship management agreement. The review and consideration of these plans at public meetings offer additional opportunities for public input on the identification of and protections for Native Hawaiian traditional and customary practices. The DLNR is committed to ensuring protections for Native Hawaiian traditional and customary rights and practices identified on or implicated by lands participating in the FSP program.

LEGAL AUTHORITY:

Chapter 195F, HRS (Forest Stewardship), establishes a program to financially assist private landowners in managing, protecting, and restoring critical natural resources in Hawaii's forested and formerly forested lands.

Section 195F-8, HRS, authorizes the DLNR to adopt administrative rules relating to the Forest Stewardship Program according to the procedures set forth in Chapter 91, HRS.

CHANGES TO PROPOSED RULE AMENDMENTS:

Based on the comments received and on internal discussions, the DLNR has decided to move forward with the proposal without any substantive changes. However, the DLNR has incorporated minor, non-substantive edits suggested by the Governor’s office for clarity.

The final proposed amendments and compilation of HAR Chapter 13-109 drafted in Ramseyer format are attached as **Exhibit B**. The proposed amendments can also be reviewed online via the Lieutenant Governor’s Office website at <https://dlnr.hawaii.gov/wp-content/uploads/2024/01/Chapter-13-109-HAR-Draft-2024.pdf>, or in person at any Division of Forestry and Wildlife (DOFAW) district office between 8:00 a.m. and 3:30 p.m., Monday through Friday, except for State holidays.

⁸ “Where no Native Hawaiian right or practice is identified or implicated, the agency may say so in a short statement[,] and the need for analysis ends there.” [Flores-Case ‘Ohana, 153 Hawai‘i at 86, 526 P.3d at 611.](#)

RECOMMENDATION:

That the Board approve the amendment and compilation of Hawaii Administrative Rules chapter 13-109, Rules for Establishing Forest Stewardship, as set forth in **Exhibit B** attached hereto.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

- Exhibit A: Hearing Officer's Report of Public Meeting
- Exhibit B: Proposed Amendments to Chapter 13-109, HAR (Ramseyer)
- Exhibit C: Current Unofficial Compilation of Chapter 13-109, HAR

EXHIBIT A

HEARING OFFICER'S REPORT AND MINUTES OF:

Public Hearing for the proposed amendments to Hawaii Administrative Rules Chapter13-109, "relating to Forest Stewardship"

Online via Zoom and in-person at 1151 Punchbowl St. Room 132 (Kalanimoku Building),
Honolulu, Hawaii 96813

March 13, 2024, 5:30PM

SUMMARY OF TESTIMONIES RECEIVED

Written testimonies are kept on file in the Division of Forestry and Wildlife for public review.

Two oral testimony and three written testimonies were received.

Irene Sprecher - Provided oral testimony and identified herself as the president of Forest Solutions Inc and the Vice President of the Hawaii Forest Industry Association. Testifying as individual, she expressed her support of the proposed amendments to the rules. She clarified that she supported the program while previously employed with the Division of Forestry and Wildlife and that Forest Solutions provides planning support for some of the management plans that are submitted to the Forest Stewardship Program (FSP). She said that having access to technical support and guidance offered by FSP is important for landowners who do not have the expertise needed to manage their forests. She appreciated the increase in cost-share support for the development of management plans, and that FSP is being more inclusive to include non-timber forest product objectives.

Nicholas Koch – Provided oral and written testimony and stated that he represents Siglo Tonewoods, who has a current FSP contract. He was also a prior member of the Forest Stewardship Advisory Committee. He expressed his support of the proposed amendments to the rules. He said that plans are time consuming for consultants to prepare resulting in high upfront costs for applicants, so he appreciated the increase in cost-share support for plan development. This will encourage more landowners to participate. He also supported the inclusion of leased lands since some leasehold projects were turned away while he was serving on the committee. He noted that many landowners find non-timber forest products more important than timber products. Lastly, he stated that he appreciates the flexibility of FSP in allowing management plan revisions and the use of different funding sources to support landowner needs.

James K. Manaku Sr. – Provided written testimony and identified himself as a concerned parent, grandparent, and great grandparent. He was concerned about his gathering rights on both public and private land.

Leslie Cole-Brooks – Provided written testimony in strong support of the proposed rule changes. She explained that she worked to update the rules under the Hawaii County Code as they pertained to native forest restoration. The updates resulted in increased participation in

the Native Forest Dedication Program. She felt the proposed FSP rule changes are similar and that it will be beneficial to program participants. Allowing long term leaseholders and the increase in cost-share support help to alleviate the cost and administrative challenges of becoming a forest steward. She also appreciated the increase in flexibility for management plans.

I. SUMMARY OF PUBLIC HEARING PROCEEDINGS

The public hearing was called to order at 5:38pm. In attendance were the following staff members from the Department of Land and Natural Resources, Division of Forestry and Wildlife:

<u>Tanya Rubenstein – Hearing Officer</u>	Cooperative Resource Management Forester
Marissa Zhang	Statewide Service Forester
Brittany Lawton	PCSU Forestry Associate

Three members of the public attended the meeting, two of whom provided oral testimony. Two written testimonies were submitted, one at the hearing and one by email. The information that the Division of Forestry and Wildlife had prepared for this public hearing was presented as planned.

The public hearing was adjourned at 6:03pm.

II. APPROVALS AND NOTICES OF PUBLIC HEARING

- A. Approval to hold this public hearing on the proposed amendments and to appoint Tanya Rubenstein, Cooperative Resource Management Forester, as the Hearing Officer was obtained from the Board of Land and Natural Resources on August 11, 2023.
- B. Notice of this public hearing was published on February 11, 2024, in the Sunday edition of the Honolulu Star-Advertiser.

Minutes prepared and respectfully submitted by Tanya Rubenstein.

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

Amendment and compilation of Chapter 109
Hawaii Administrative Rules

SUMMARY

1. The title of Subchapter 3 is amended.
2. §§13-109-1 through 13-109-11 are amended.
3. Chapter 109 is compiled.

Amendment and Compilation of Chapter 109
Hawaii Administrative Rules

1. Chapter 109, Hawaii Administrative Rules, entitled "Rules for Establishing Forest Stewardship", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

CHAPTER 109

RULES FOR ESTABLISHING FOREST STEWARDSHIP

Subchapter 1. General Provisions

- §13-109-1 Purpose and applicability
- §13-109-2 Definitions
- §13-109-3 Establishment and duties of the forest stewardship advisory committee
- §13-109-4 Applicant eligibility
- §13-109-5 Applicant enrollment
- §13-109-6 Establishment of approved forest stewardship practices

Subchapter 2. Management Plan

- §13-109-7 Forest stewardship management plan

Subchapter 3. Agreement with Applicant

- §13-109-8 Agreement and conditions
- §13-109-9 Reports
- §13-109-10 Penalty payback provisions
- §13-109-11 Payback provision for commercial production of timber or other forest products

SUBCHAPTER 1

GENERAL PROVISIONS

§13-109-1 [~~Purpose and applicability.~~] **Purpose and applicability.** The purpose of this section is to provide rules to implement chapter 195F, HRS, which authorizes the board of land and natural resources to establish a forest stewardship program to financially assist applicants to manage, protect, and restore important natural resources on private forest or formerly forested property. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-1)

§13-109-2 [~~Definitions.~~] **Definitions.** As used in this chapter, unless the context requires otherwise:

"Administrator" means the administrator of the division of forestry and wildlife, department of land and natural resources.

"Agreement" means a written program forest stewardship management [contract] agreement between the board and applicant[-], in which the parties agree that the board will contribute funding to cover the cost of implementing the forest stewardship management plan.

"Applicant" means any private entity or person having an interest in or holding any encumbrance upon [~~private~~] eligible property in the State, as set forth in section 13-109-4, including any private entity or person having a leasehold interest in the real property with an unexpired term of ten or more years.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Department" means the department of land and natural resources.

"Division" means the division of forestry and wildlife, department of land and natural resources.

"Forest stewardship advisory committee" means a group of people representing federal, state, and county resource agencies, private landowners, forest industry, consulting foresters, native Hawaiian interests, and environmental and conservation organizations who advise the administrator. The forest stewardship advisory committee shall meet the requirements for a State Forest Stewardship Coordinating Committee, as set forth in the Cooperative Forestry Assistance Act of 1978, P.L. 91-313, § 19 (codified at 16 U.S.C. §2113 (2018)), as amended.

"Hold-down rate" means the maximum cost-share rate that the program will pay to an applicant to implement a practice.

"Landowner" means any person having an interest in or holding any encumbrance upon land in the State, including any person having a lease interest in the real property with an unexpired term of ten or more years.

"Management dedication term" means a period in which the applicant agrees to implement and maintain the project site as established under the agreement.

"Management plan" means a written document for the management of a specified area identifying forest stewardship management goals, objectives, and forestry practices necessary for the long-term management of forest resources, fire hazards, timber and wood products, soil and water resources, riparian areas, wetlands, fish and wildlife habitats, and outdoor recreation.

~~["Natural area partnership program" is a state program as set forth in chapter 195, HRS, and is designed to manage private lands that are of natural area quality that are permanently dedicated to conservation.]~~

"Native vegetation" means trees, shrubs, and plants endemic or indigenous to Hawaii.

"Potential natural area reserve" means land or water areas within the protective subzone of the conservation district established pursuant to chapter 183C, HRS, intact native natural communities identified by the heritage program pursuant to section 195-2, HRS, and other lands or waters meeting criteria established by the natural ~~[areas]~~ area reserves system [pursuant to section 195-2, HRS.] commission.

"Practice" means a management action that is eligible for program cost-share assistance.

"Program" means the forest stewardship program established in section 195F-3, HRS.

"Program proposal" means a request from a landowner to the program for cost-share assistance for the development of a forest stewardship management plan.

[Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-2)

§13-109-3 [Establishment and duties of the forest stewardship advisory committee.] Establishment and duties of the forest stewardship advisory committee. (a) The chairperson shall establish a forest stewardship advisory committee to advise and assist the division to plan, coordinate, and implement the program. The chairperson or the chairperson's designee or the authorized representative shall appoint [a

~~chairperson and~~ members to the forest stewardship advisory committee. Members shall be volunteers, serve part-time, and shall not be compensated by the program for duties performed.

(b) The forest stewardship advisory committee shall perform the following duties:

(1) Review and recommend [~~for approval to the administrator,~~] program [proposal and management plans prior to board submittal;] proposals to the administrator for approval;

(2) Review and recommend forest stewardship management plans to the administrator for approval;

(3) Recommend approval of financial assistance for implementation of forest stewardship management plans to the administrator, prior to board submittal;

~~[-2-]~~ (4) Establish and periodically review program practices and recommend hold-down rates for each program practice; [and]

~~[-3-]~~ (5) Advise the department on other [program] relevant policies and guidelines[-], including but not limited to local and national initiatives; and

(6) Review and make recommendations to the administrator regarding federal Forest Legacy Program proposals, grant requests, and projects pursuant to the Cooperative Forestry Assistance Act of 1978, P.L. 91-313, §7 (codified at 16 U.S.C. §2103c (2012)), as amended.

(7) Review applications for membership on the forest stewardship advisory committee and make recommendations to the chairperson or her designee or the authorized representative for approval.

(c) The forest stewardship advisory committee shall meet quarterly each year, with each member serving [~~two-year~~] three-year staggered terms. The chairperson or the chairperson's designee or the authorized representative may appoint members to consecutive terms.

(d) The forest stewardship advisory committee shall maintain a record of its activities and actions.

(e) Any action taken by the forest stewardship advisory committee shall be by a simple majority of its members.

(f) [~~Seven~~] The forest stewardship advisory committee shall consist of thirteen members. Seven members of the forest stewardship advisory committee shall constitute a quorum to do business. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-3)

§13-109-4 [~~Applicant eligibility.~~] **Applicant eligibility.**

(a) [~~In order to~~] To qualify under this program, [~~applicants~~] an applicant shall be [~~private individuals, joint owners, private organizations, private associations, or corporations.~~] a landowner, as set forth in section 13-109-2.

(b) Applicants are eligible to receive program assistance if [~~private forest~~] property is:

(1) Managed by applying approved practices, as defined by [~~chapter~~] section 195F-5(b), HRS[-];

(2) Managed so as not to degrade native vegetation, as defined by section 195F-2, HRS[-], while applicant is implementing approved forest stewardship management plan as set forth in section 195F-5, HRS[-]; and

(3) A minimum of five contiguous acres that will be dedicated to the program.

(c) Applicants are ineligible to receive program assistance, if [~~private~~] otherwise eligible property is:

(1) Leasehold for a period of less than ten years following program approval;

[~~(2) Managed under existing federal, state, or private financial assistance programs. Private forest lands managed under existing federal, state, or private sector financial and technical assistance programs may be eligible for assistance if the applicant agrees to comply with the requirements of the program or if forest management practices are expanded or enhanced to meet the requirements of this section;~~] or

[~~(3)~~] (2) A potential natural area reserve [~~. as defined in this chapter~~].

[~~(d) A minimum of five contiguous acres of private property shall be dedicated to the program.~~]

(d) Private lands managed under existing federal, county, or private sector financial and/or technical assistance programs in conjunction with the forest stewardship program are not eligible to receive more than ninety per cent of the total cost of the forest management practices from all financial and technical assistance programs. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-5 [~~Applicant enrollment.~~] **Applicant enrollment.**

(a) Applicants [~~found~~] eligible under section 13-109-4 shall follow these steps for program enrollment:

(1) Applicants shall submit a program proposal to the forest stewardship advisory committee for consideration. The proposal shall describe the applicant's forest management objectives, including

proposed practices~~[7]~~ and the nature of the forest resources to be managed. The forest stewardship advisory committee shall recommend for approval to the administrator, eligible proposals that adequately address current program priorities. Program priorities include, but are not limited to:

- (A) Enhancement and protection of key watershed areas in the public interest;
- (B) Development or adaptation of new forestry and conservation techniques for Hawaii;
- (C) ~~[Provision]~~ Provisions for economic diversification and rural employment; and
- (D) Preservation or restoration of especially valuable natural resources, including native plants, animals, and ecosystems.

- (2) Applicants whose program proposals are recommended for approval by the forest stewardship advisory committee~~[7]~~ and approved by the administrator, may prepare and submit a ~~[program]~~ forest stewardship management plan pursuant to section 195F-5(a), HRS, for consideration to the forest stewardship advisory committee ~~[. The program management plan shall cover a minimum of ten years.]~~ as provided in section 13-109-7(a). Applicants are eligible to receive reimbursement payments from the division in an amount not to exceed the limits set forth in section 195F-6(a), HRS, for the development of a forest stewardship management plan after the forest stewardship management plan is recommended for approval by the forest stewardship advisory committee and approved by the administrator.
- (3) Reimbursement for the development of a forest stewardship plan shall be subject to approval of the forest stewardship management plan by the board, or the board's designee.

(b) Upon approval of the ~~[program]~~ forest stewardship management plan by the forest stewardship advisory committee~~[7]~~ the] and administrator, the administrator may recommend to the board, approval of financial assistance for implementation of all or selected portions of the forest stewardship management plan, subject to availability of funding. The division shall also prepare ~~[and enter into]~~ an agreement pursuant to section 195F-6(c) (3), HRS, between the applicant and board ~~[for approval]~~, as provided in section ~~[13-109-7(a).]~~ 13-109-8(a), for approval by the board. The ~~[program]~~ forest stewardship management plan shall be attached as an ~~[addendum]~~ exhibit to the agreement.

(c) Upon board approval of the agreement, the applicant is responsible for implementing the practices described in the ~~[program management plan]~~ agreement for the duration of the ~~[approved project implementation period.]~~ management dedication term. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §§195F-5, 195F-6)

§13-109-6 ~~[Establishment of approved forest stewardship practices.]~~ **Establishment of approved forest stewardship practices.** (a) A list of forest stewardship management practices shall be eligible for cost-share assistance as provided in section ~~[195F-5,]~~ 195F-5(b), HRS. ~~[They]~~ The eligible categories of forest stewardship practices include, but are not limited to:

- (1) Applicant forest stewardship management plan development ~~[enables applicants]~~ to define ~~[their]~~ the forest management objectives and the specific management practices that ~~[they]~~ will ~~[employ]~~ be employed to achieve these objectives~~[-];~~
- (2) Reforestation and afforestation ~~[establishes]~~ to establish or ~~[reestablishes diverse]~~ reestablish forest stands through natural regeneration, planting, or direct seeding for conservation purposes, windbreaks, and sustained ~~[timber]~~ production. ~~[A list of eligible program practice components includes:~~
 - ~~(A) Site preparation;~~
 - ~~(B) Seedling purchase and/or production;~~
 - ~~(C) Seedling planting;~~
 - ~~(D) Fertilization and/or soil amendments;~~
 - ~~(E) Weed and/or moisture control; and~~
 - ~~(F) Tree seedling protection, including predator control.]~~ of forest products;
- (3) Forest and agroforest ~~[improvement improves]~~ management to improve forest stand productivity, stand vigor, forest health, aesthetic quality, fire prevention, and the value and quality of ~~[wood]~~ forest products. ~~[A list of eligible program practice components includes:~~
 - ~~(A) Release of desirable tree species;~~
 - ~~(B) Noncommercial thinning;~~
 - ~~(C) Control of undesirable plant species;~~
 - ~~(D) Fertilization and/or soil amendments; and~~
 - ~~(E) Tree seedling protection, including predator control.~~
- ~~(4) Windbreak and hedgerow establishment establishes, maintains, and renovates windbreaks and hedgerows to~~

~~reduce soil erosion and conserve soil and water resources. A list of eligible program practice components includes:~~

- ~~(A) Site preparation;~~
- ~~(B) Seedling purchase and/or production;~~
- ~~(C) Seedling planting~~
- ~~(D) Fertilization and/or soil amendments;~~
- ~~(E) Weed and/or moisture control;~~
- ~~(F) Non-commercial thinning;~~
- ~~(G) Mulching; and~~
- ~~(H) Tree seedling protection, including predator control.];~~

~~[-(5)] (4) Soil and water protection and improvement [maintains or improves] to maintain or improve water quality and soil productivity on forested land and along waterways. [A list of eligible program practice components includes:~~

- ~~(A) Critical area revegetation;~~
- ~~(B) Mulching;~~
- ~~(C) Water diversion; and~~
- ~~(D) Tree seedling protection, including predator control.];~~

~~[-(6)] (5) Riparian and wetland protection [protects, restores, and improves] to protect, restore, and improve wetlands and riparian areas to maintain water quality and enhance habitat. [A list of eligible program practice components includes:~~

- ~~(A) Site preparation;~~
- ~~(B) Seedling purchase and/or production;~~
- ~~(C) Seedling planting;~~
- ~~(D) Fertilization and/or soil amendments;~~
- ~~(E) Establish permanent vegetative cover;~~
- ~~(F) Streambank stabilization; and~~
- ~~(G) Tree seedling protection, including predator control.];~~

~~[-(7)] (6) [~~Wildlife~~] Native fish and wildlife habitat improvement [~~restores, improves, or establishes~~] and management to restore, improve, maintain, or establish permanent upland and/or wetland habitat for [~~specific game, non-game, non-native or~~] native fish and wildlife species. [A list of eligible program practice components includes:~~

- ~~(A) Control of undesirable plant species;~~
- ~~(B) Site preparation;~~
- ~~(C) Wildlife watering units;~~
- ~~(D) Seedling purchase and/or production;~~
- ~~(E) Seedling planting;~~

- ~~(F) Fertilization and/or soil amendments; and~~
- ~~(G) Tree seedling protection, including predator control.]; and~~
- (7) ~~[(8)]~~ Forest recreation enhancement [establishes and enhances] to establish and enhance forest recreation~~[-~~
A list of eligible program practice components includes:
 - ~~(A) Trail construction~~
 - ~~(b) Harvesting practices, and practices] opportunities.~~
 - (8) Invasive species management to control and manage incipient or established invasive species.
- (b) The forest stewardship advisory committee shall recommend to the board eligible practices for use under the program.
- ~~[(b)]~~ (c) [Harvesting practices and practices] Practices involving [Christmas tree or] orchard production are not eligible for program cost-share assistance. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 2

MANAGEMENT PLAN

§13-109-7 ~~[Forest stewardship management plan.]~~ **Forest stewardship management plan.** (a) The forest stewardship management plan shall include:

- (1) Cover sheet. This page lists the applicant's name and address; location of ~~[private]~~ property described in the plan; the name, address, title, and phone number of the person completing the plan; and the date the plan is completed.
- (2) Signature page. This page shall be signed by the applicant, person preparing the plan, and by the administrator certifying that the plan meets the criteria established for the program.
- (3) ~~[Stewardship plan preface.]~~ Executive summary. This ~~[form, when checked off by the person writing the program management plan, _~~ lists the natural resource values:
 - ~~(A) Reforestation;~~
 - ~~(B) Soil and water quality;~~
 - ~~(C) Agroforestry;~~
 - ~~(D) Forest health;~~
 - ~~(E) Archaeological or cultural resources;~~
 - ~~(F) Wildlife enhancement;~~
 - ~~(G) Threatened and Endangered species; and~~

~~(H) Native resources.~~

~~that the applicant has considered to qualify this program plan as a stewardship project.]~~ section summarizes the property description, past and current land uses, current forest conditions (e.g., forest type, vegetation, wildlife, forest health, threats, and other resource concerns), landowner vision and goals, and management objectives.

- (4) Introduction. This ~~[portion of the plan]~~ section briefly describes ~~[private]~~ the property being dedicated to the program, current and historic land uses, including any commercial uses, elevation, rainfall, topography, the applicant's overall vision and goals, and a concise summary of the applicant's specific forest management objectives.
- (5) Land and resource description. This ~~[portion]~~ section describes the physical and ecological characteristics of the property being dedicated to the program, including existing vegetation, ~~[slope, elevation, aspect,]~~ existing infrastructure, access, soil and watershed conditions, fish and wildlife habitats, threats to forest health and function, forest products, recreational and aesthetic values, historic or cultural resources, and threatened and endangered species pursuant to chapter 195D, HRS.
- (6) ~~[Recommended]~~ Management objectives and recommended practices. This ~~[portion]~~ section describes the specific forest management objectives and one or more forest stewardship practices as recommended by the person writing the applicant's program management plan as provided in section 13-109-6(a) (1) to (8).
- (7) Practice implementation schedule. This ~~[portion]~~ section summarizes the annual practices and estimates corresponding annual costs for the duration of the approved project implementation period in a table format. ~~[It]~~ The schedule shall outline the program practices, approved program reimbursements, and the applicant's costs.
- (8) Budget summary. This ~~[portion]~~ section estimates the annual total costs contributed by the program, any other contributing financial assistance program, and applicant for the duration of the approved project implementation period.
- (9) ~~[Program map. A program map or topographic map at one inch equals twenty-four thousand feet scale]~~ Project maps. Maps, such as a location map, project attribute map, and soil map, shall be attached to the ~~[program]~~

forest stewardship management plan. The [map] maps shall delineate the area which the applicant is dedicating to the program. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 3

AGREEMENT WITH APPLICANT

§13-109-8 [~~Agreement and conditions.~~] **Agreement and conditions.** (a) The division [shall] may recommend an agreement, as set forth in section 13-109-2, for the applicant's implementation for all or portions of a forest stewardship management plan, pursuant to section 13-109-5(b).

(b) The division may develop, process, and administer an agreement with the applicant for board approval that shall include:

- (1) The scope of work and time of performance to implement program practices;
- (2) The applicant's compensation for implementing approved program practices;
- (3) Amendment procedures to the applicant's forest stewardship management plan;
- (4) Procedures to inspect completed program practices;
- (5) Applicant's program management plan; and
- (6) Other terms and conditions as determined by the board.

~~[The agreement shall be for a minimum of ten years.~~

~~(b)]~~ (c) The agreement, as set forth section 13-109-2, shall be for a minimum of ten years. Depending upon the management objectives, goals, and schedule, the applicant [can choose to accept a] and division may agree to a longer program management dedication term [of greater than 10 years]. An agreement, as set forth in section 13-109-2, that includes management practices associated with timber production shall require a management dedication term of a minimum of twenty years.

~~[-e)]~~ (d) Applicants with a board approved forest stewardship management plan and agreement, as set forth in section 13-109-2, subject to availability of funds, shall:

- (1) Receive [reimbursed] reimbursement payments from the division [up to fifty per cent of the total actual costs] in an amount not to exceed the limits set forth in section 195F-6(a), HRS, to [develop and] implement practices in the applicant's approved [program practices] forest stewardship management plan not to

- exceed a total amount per year per applicant as [designated] approved by the [division,] board;
- (2) Be required to [~~spend~~] expend the applicant's funds before seeking reimbursement payments from the division[; ~~and~~]
- (3) ~~Not use other federal, state, or county government program funds for the applicant's fund matching requirements].~~ The applicant may use funds provided by federal, county, or private sector financial and technical assistance programs to fulfill the applicant's cost-share requirement; provided that the funds supplied from all financial and technical assistance programs do not cover more than ninety per cent of the actual cost of forest management practices;
- [~~(d) Other conditions include:~~
- (1) ~~Reimbursement payments to the applicant shall:]~~
- [~~(A)~~] (3) Be Receive reimbursement payments within the hold-down rates that were established for each program practice [~~by~~] based on recommendation of the forest stewardship advisory committee;
- [~~(B)~~] Not be made for a management practice that is funded through another government program;
- [~~(C)~~] (4) [~~Not be made~~] Receive reimbursement payments only for [any] work [not] identified in the [program] forest stewardship management plan; and
- [~~(D)~~] (5) [~~Not be made~~] Receive reimbursement payments for program practices implemented [prior] subsequent to the board approving the [program] agreement. [Eff 1/8/99; am and comp]
- (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-9 [Reports.] Reports. (a) The applicant shall submit [~~semiannual~~] semi-annual progress reports every six months to the division for each year in which the applicant receives program funding. The reports shall detail program accomplishments, areas requiring technical advice, and any proposed modifications to the program management plan and other conditions deemed necessary by the board to implement the purposes of chapter 195F, HRS.

(b) [~~Upon applicant's submittal of progress reports and program practice invoices,~~] Before making any reimbursement payments, the division shall have the right to inspect and approve the work on [private] the property after prior notice has been [made] given to the applicant. [~~Upon approval, the division shall reimburse the applicant an amount up to fifty per~~

~~cent of the total actual cost to implement approved management practices and based on the program budget in the agreement and as provided in section 13-109-8(d)(1)(A) to (D).]~~

(c) In the event that the applicant determines in good faith that it is unable to ~~[fulfill its financial and program management obligations,]~~ implement the agreement, the ~~[division]~~ chairperson or the chairperson's designee or the authorized representative may renegotiate the terms of the agreement with the applicant. Terms of the agreement shall include:

- (1) Reestablishment of management priorities;
- (2) Deferral or discontinuation of the specified work; or
- (3) An extension of time to accomplish the specified work.
[Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §1925F-6)

§13-109-10 ~~[Penalty payback provisions.]~~ **Penalty payback provisions.** (a) Failure by the applicant to comply with the ~~[management plan and]~~ agreement terms may result in the cancellation of the ~~[forest stewardship designation.]~~ agreement by the board.

(b) In the event that the agreement is cancelled ~~[the applicant defaults on the agreed terms between the board and applicant],~~ the applicant shall promptly pay the State the following payback and penalty moneys:

- (1) If ~~[the applicant defaults]~~ cancelled in the first three years following the initial date of the agreement, the applicant shall pay back all matching funds to the State;
- (2) If ~~[the applicant defaults]~~ cancelled after the first three years following the initial date of the agreement, the applicant shall pay back matching funds received for the immediately preceding three years to the State; and
- (3) A penalty provision consisting of an interest payment as determined in the agreement between the board and applicant shall be added to the ~~[refund]~~ payment due to the State. ~~[Interest payment shall be calculated on an annual per cent of funds received by the applicant.]~~ [Eff 1/8/99; am and comp]
(Auth: HRS §195F-8) (Imp: HRS §195F-7)

§13-109-11 ~~[Payback provision for commercial timber production.]~~ **Payback provision for commercial production of timber or other forest products.** If an applicant's primary management objective is commercial ~~[timber]~~ production ~~[7]~~ of

timber or other forest products, the board may require as a condition to receiving state matching funds a payback provision that a certain percentage of all matching state funds be paid back to the State upon each commercial [~~timber~~] harvest as set forth in the [~~contract~~] agreement between the board and the applicant. [~~A commercial timber harvest as used herein is defined as a certain minimum volume of timber removed per acre from a certain minimum acreage of the applicant's property as determined by the division or as set forth in the contract between the board and the applicant.~~] [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-4)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of Chapter 109, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

DAWN N. S. CHANG
Director of Department
of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 1 FORESTRY

CHAPTER 109

RULES FOR ESTABLISHING FOREST STEWARDSHIP

Subchapter 1. General Provisions

- §13-109-1 Purpose and applicability
- §13-109-2 Definitions
- §13-109-3 Establishment and duties of the forest stewardship advisory committee
- §13-109-4 Applicant eligibility
- §13-109-5 Applicant enrollment
- §13-109-6 Establishment of approved forest stewardship practices

Subchapter 2. Management Plan

- §13-109-7 Forest stewardship management plan

Subchapter 3. Agreement with Applicant

- §13-109-8 Agreement and conditions
- §13-109-9 Reports
- §13-109-10 Penalty payback provisions
- §13-109-11 Payback provision

SUBCHAPTER 1

GENERAL PROVISIONS

§13-109-1 Purpose and applicability. The purpose of this section is to provide rules to implement chapter 195F, HRS, which authorizes the board of land and natural resources to establish a forest stewardship program to financially assist applicants to manage, protect, and restore important natural resources on private forest or formerly forested property.
[Eff. **JAN 08 1999** Auth: HRS §195F-8) (Imp: HRS §195F-1)

§13-109-2 Definitions. As used in this chapter, unless the context requires otherwise:

"Administrator" means the administrator of the division of forestry and wildlife, department of land and natural resources.

"Agreement" means a written program management contract between the board and applicant.

"Applicant" means any person having an interest in or holding any encumbrance upon private property in the State, including any person having a leasehold interest in the real property with an unexpired term of ten or more years.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Department" means the department of land and natural resources.

"Division" means the division of forestry and wildlife, department of land and natural resources.

"Forest stewardship advisory committee" means a group of people representing federal, state and county resource agencies, private landowners, forest industry, consulting foresters, and environmental and conservation organizations who advise the administrator.

"Hold-down rate" means the maximum cost-share rate that the program will pay to an applicant to implement a practice.

"Management plan" means a written document for the management of a specified area identifying forest

stewardship management goals, objectives, and forestry practices necessary for the long-term management of forest resources, fire hazards, timber and wood products, soil and water resources, riparian areas, wetlands, fish and wildlife habitats, and outdoor recreation.

"Natural area partnership program" is a state program as set forth in chapter 195, HRS, and is designed to manage private lands that are of natural area quality that are permanently dedicated to conservation.

"Potential natural area reserve" means land or water areas within the protective subzone of the conservation district established pursuant to 183C, HRS, intact native natural communities identified by the heritage program pursuant to section 195-2, HRS, and other lands or waters meeting criteria established by the natural areas reserves system pursuant to section 195-2, HRS.

"Practice" means a management action that is eligible for program cost-share assistance.

"Program" means the forest stewardship program established in section 195F-3, HRS.

[Eff. JAN 08 1999] (Auth: HRS §195F-8) (Imp: HRS §195F-2)

\$13-109-3 Establishment and duties of the forest stewardship advisory committee. (a) The chairperson shall establish a forest stewardship advisory committee to advise and assist the division to plan, coordinate, and implement the program. The chairperson shall appoint a chairperson and members to the forest stewardship advisory committee. Members shall be volunteers, serve part-time, and shall not be compensated for duties performed.

(b) The forest stewardship advisory committee shall perform the following duties:

- (1) Review and recommend for approval to the administrator, program proposal and management plans prior to board submittal;
- (2) Establish and periodically review hold-down rates for each program practice; and
- (3) Advise the department on other program policies and guidelines.

(c) The forest stewardship advisory committee shall meet quarterly each year, with each member serving two-year staggered terms. The chairperson may appoint members to consecutive terms.

(d) The forest stewardship advisory committee shall maintain a record of its activities and actions.

(e) Any action taken by the forest stewardship advisory committee shall be by a simple majority of its members.

(f) Seven members of the forest stewardship advisory committee shall constitute a quorum to do business. [Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-3)

§13-109-4 Applicant eligibility. (a) In order to qualify under this program, applicants shall be private individuals, joint owners, private organizations, private associations, or corporations.

(b) Applicants are eligible to receive program assistance if private forest is:

- (1) Managed by applying approved practices as defined by chapter 195F-5(b), HRS.
- (2) Managed so as not to degrade native vegetation, as defined by section 195F-2, HRS., while applicant is implementing approved management plan as set forth in section 195F-5, HRS.

(c) Applicants are ineligible to receive program assistance, if private property is:

- (1) Leasehold for a period of less than ten years following program approval;
- (2) Managed under existing federal, state, or private financial assistance programs. Private forest lands managed under existing federal, state, or private sector financial and technical assistance programs may be eligible for assistance if the applicant agrees to comply with the requirements of the program or if forest management practices are expanded or enhanced to meet the requirements of this section; or
- (3) A potential natural area reserve as defined in this chapter.
- (d) A minimum of five contiguous acres of private

property shall be dedicated to the program. [Eff.
 JAN 05 1999] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-5 Applicant enrollment. (a) Applicants found eligible under section 13-109-4 shall follow these steps for program enrollment:

- (1) Applicants shall submit a program proposal to the forest stewardship advisory committee for consideration. The proposal shall describe the applicant's forest management objectives, including proposed practices, and the nature of the forest resources to be managed. The forest stewardship advisory committee shall recommend for approval to the administrator, eligible proposals that adequately address current program priorities. Program priorities include, but are not limited to:
 - (A) Enhancement and protection of key watershed areas in the public interest;
 - (B) Development or adaptation of new forestry and conservation techniques for Hawaii;
 - (C) Provision for economic diversification and rural employment;
 - (D) Preservation or restoration of especially valuable natural resources, including native plants, animals and ecosystems.
- (2) Applicants whose proposals are recommended by the forest stewardship advisory committee, may prepare and submit a program management plan pursuant to section 195F-5(a), HRS, for consideration to the forest stewardship advisory committee. The program management plan shall cover a minimum of ten years.
 - (b) Upon approval of the program management plan by the forest stewardship advisory committee, the division shall prepare and enter into an agreement pursuant to section 195F-6(c)(3), HRS, between the applicant and board for approval as provided in section 13-109-7(a). The program management plan shall be attached as an addendum to the agreement.
 - (c) Upon board approval of the agreement, the applicant is responsible for implementing the practices described in the program management plan for the

duration of the approved project implementation period.
[Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp:
HRS §§ 195F-5, 195F-6)

§13-109-6 Establishment of approved forest stewardship practices. (a) A list of forest stewardship management practices shall be eligible for cost-share assistance as provided in section 195F-5, HRS. They include, but are not limited to:

- (1) - Applicant forest stewardship plan development enables applicants to define their forest management objectives and the specific management practices that they will employ to achieve these objectives.
- (2) Reforestation and afforestation establishes or reestablishes diverse forest stands through natural regeneration, planting, or direct seeding for conservation purposes and sustained timber production. A list of eligible program practice components includes:
 - (A) Site preparation;
 - (B) Seedling purchase and/or production;
 - (C) Seedling planting;
 - (D) Fertilization and/or soil amendments;
 - (E) Weed and/or moisture control; and
 - (F) Tree seedling protection, including predator control.
- (3) Forest and agroforest improvement improves forest stand productivity, stand vigor, forest health, and the value and quality of wood products. A list of eligible program practice components includes:
 - (A) Release of desirable tree species;
 - (B) Noncommercial thinning;
 - (C) Control of undesirable plant species;
 - (D) Fertilization and/or soil amendments; and
 - (E) Tree seedling protection, including predator control.
- (4) Windbreak and hedgerow establishment establishes, maintains, and renovates windbreaks and hedgerows to reduce soil erosion and conserve soil and water

- resources. A list of eligible program practice components includes:
- (A) Site preparation;
 - (B) Seedling purchase and/or production;
 - (C) Seedling planting
 - (D) Fertilization and/or soil amendments;
 - (E) Weed and/or moisture control;
 - (F) Non-commercial thinning;
 - (G) Mulching; and
 - (H) Tree seedling protection, including predator control.
- (5) Soil and water protection and improvement maintains or improves water quality and soil productivity on forested land and along waterways. A list of eligible program practice components includes:
- (A) Critical area revegetation;
 - (B) Mulching;
 - (C) Water diversion; and
 - (D) Tree seedling protection, including predator control.
- (6) Riparian and wetland protection protects, restores, and improves wetlands and riparian areas to maintain water quality and enhance habitat. A list of eligible program practice components includes:
- (A) Site preparation;
 - (B) Seedling purchase and/or production;
 - (C) Seedling planting;
 - (D) Fertilization and/or soil amendments;
 - (E) Establish permanent vegetative cover;
 - (F) Streambank stabilization; and
 - (G) Tree seedling protection, including predator control.
- (7) Wildlife habitat improvement restores, improves, or establishes permanent upland and/or wetland habitat for specific game, non-game, non-native or native wildlife species. A list of eligible program practice components includes:
- (A) Control of undesirable plant species;
 - (B) Site preparation;
 - (C) Wildlife watering units;
 - (D) Seedling purchase and/or production;
 - (E) Seedling planting;
 - (F) Fertilization and/or soil amendments;

- and
- (G) Tree seedling protection, including predator control.
- (8) Forest recreation enhancement establishes and enhances forest recreation. A list of eligible program practice components includes:
- (A) Trail construction
 - (b) Harvesting practices, and practices involving Christmas tree or orchard production are not eligible for program cost-share assistance. [Eff. **JAN 08 1999**]
] (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 2

MANAGEMENT PLAN

- §13-109-7 Forest stewardship management plan. (a) The forest stewardship management plan shall include:
- (1) Cover sheet. This page lists the applicant's name and address; location of private property described in the plan; the name, address, title, and phone number of the person completing the plan; and the date the plan is completed.
 - (2) Signature page. This page shall be signed by the applicant, person preparing the plan, and by the administrator certifying that the plan meets the criteria established for the program.
 - (3) Stewardship plan preface. This form, when checked off by the person writing the program management plan, lists the natural resource values:
 - (A) Reforestation
 - (B) Soil and water quality;
 - (C) Agroforestry;
 - (D) Forest health;
 - (E) Archaeological or cultural resources;
 - (F) Wildlife enhancement;
 - (G) Threatened and Endangered species; and
 - (H) Native resources.that the applicant has considered to qualify this program plan as a stewardship project.

- (4) Introduction. This portion of the plan briefly describes private property being dedicated to the program, current and historic land uses, including any commercial uses, and a concise summary of the applicant's specific forest management objectives.
- (5) Land and resource description. This portion describes the physical and ecological characteristics of the property being dedicated to the program including existing vegetation, slope, elevation, aspect, access, soil and watershed conditions, fish and wildlife habitats, recreational and aesthetic values, historic or cultural resources, and threatened and endangered species pursuant to chapter 195D, HRS.
- (6) Recommended practices. This portion describes one or more forest stewardship practices as recommended by the person writing the applicant's program management plan as provided in section 13-109-6(a)(1) to (8).
- (7) Practice implementation schedule. This portion summarizes the annual practices and estimates corresponding annual costs for the duration of the approved project implementation period in a table format. It shall outline the program practices, approved program reimbursements, and the applicant's costs.
- (8) Budget summary. This portion estimates the annual total costs contributed by the program and applicant for the duration of the approved project implementation period.
- (9) Program map. A program map or topographic map at one inch equals twenty-four thousand feet scale shall be attached to the program management plan. The map shall delineate the area which the applicant is dedicating to the program. [Eff. **JAN 08 1999**]
 (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 3

AGREEMENT WITH APPLICANT

§13-109-8 Agreement and conditions. (a) The division shall develop, process, and administer an agreement with the applicant for board approval that shall include:

- (1) The scope of work and time of performance to implement program practices;
- (2) The applicant's compensation for implementing approved program practices;
- (3) Amendment procedures to the applicant's management plan;
- (4) Procedures to inspect completed program practices;
- (5) Applicant's program management plan; and
- (6) Other terms and conditions as determined by the board. The agreement shall be for a minimum of ten years.

(b) Depending upon the management objectives, goals, and schedule, the applicant can choose to accept a program management dedication term of greater than 10 years.

(c) Applicants shall:

- (1) Receive reimbursed payments from the division up to fifty per cent of the total actual costs to develop and implement applicant's approved program practices not to exceed a total amount per year per applicant as designated by the division;
- (2) Be required to spend applicant's funds before seeking reimbursement payments from the division; and
- (3) Not use other federal, state, or county government program funds for the applicant's fund matching requirements.

(d) Other conditions include:

- (1) Reimbursement payments to the applicant shall:
 - (A) Be within the hold-down rates that were established for each program practice by the forest stewardship advisory committee;
 - (B) Not be made for a management practice that is funded through another

- government program;
- (C) Not be made for any work not identified in the program management plan; and
 - (D) Not be made for program practices implemented prior to board approving the program agreement.
- [Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-9 Reports. (a) The applicant shall submit semiannual progress reports every six months to the division for each year in which the applicant receives program funding. The reports shall detail program accomplishments, areas requiring technical advice, and any proposed modifications to the program management plan and other conditions deemed necessary by the board to implement the purposes of chapter 195F, HRS.

(b) Upon applicant's submittal of progress reports and program practice invoices, the division shall inspect and approve the work on private property after prior notice has been made to the applicant. Upon approval, the division shall reimburse the applicant an amount up to fifty per cent of the total actual cost to implement approved management practices and based on the program budget in the agreement and as provided in section 13-109-8(d)(1)(A) to (D).

(c) In the event that the applicant determines in good faith that it is unable to fulfill its financial and program management obligations, the division may renegotiate the terms of the agreement with the applicant. Terms of the agreement shall include:

- (1) Reestablishment of management priorities;
- (2) Deferral or discontinuation of the specified work; or
- (3) An extension of time to accomplish the specified work. [Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-10 Penalty payback provisions. (a) Failure by the applicant to comply with the management plan and agreement terms may result in the cancellation

of the forest stewardship designation by the board.

(b) In the event that the applicant defaults on the agreed terms between the board and applicant, the applicant shall promptly pay the State the following payback and penalty moneys:

- (1) If the applicant defaults in the first three years following the initial date of the agreement, the applicant shall pay back all matching funds to the State;
- (2) If the applicant defaults after the first three years following the initial date of the agreement, the applicant shall pay back matching funds received for the immediately preceding three years to the State; and
- (3) A penalty provision consisting of an interest payment as determined in the agreement between the board and applicant shall be added to the refund due to the State. Interest payment shall be calculated on an annual per cent of funds received by the applicant. [Eff. **JAN 08 1999**]
(Auth: HRS §195F-8) (Imp: HRS §195F-7)

§ 13-109-11 Payback provision for commercial timber production. If an applicant's primary management objective is commercial timber production, the board may require as a condition to receiving state matching funds a payback provision that a certain percentage of all matching state funds be paid back to the State upon each commercial timber harvest as set forth in the contract between the board and the applicant. A commercial timber harvest as used herein is defined as a certain minimum volume of timber removed per acre from a certain minimum acreage of the applicant's property as determined by the division or as set forth in the contract between the board and the applicant. [Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-4)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-109, Hawaii Administrative Rules on the Summary Page dated October 9, 1998, was adopted on October 9, 1998, following public hearings held at Honolulu, Oahu on July 6, 1998; Kahului, Maui on July 9, 1998; Kaunakakai, Molokai on July 13, 1998; Lihue, Kauai on July 16, 1998; Hilo, Hawaii on July 21, 1998; Kona, Hawaii on July 22, 1998 and Lanai City, Lanai on July 27, 1998. Public notice of the hearings was given in the Honolulu Advertiser; on June 6, 1998; Hawaii Tribune Herald, West Hawaii Today, Maui News and Garden Island News on June 7, 1998.

The adoption of chapter 13-109, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Michael D. Wilson, Chairperson
Board of Land and Natural
Resources

Member, Board of Land and
Natural Resources

APPROVED:

Benjamin J. Cayetano, Governor
State of Hawaii

Dated: Dec. 28, 1998

APPROVED AS TO FORM:

Deputy Attorney General

DEC 29 1998

Filed

LIEUTENANT GOVERNOR
OFFICE

'98 DEC 29 09:30

1

