

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

Rules Amending Title 15,
Hawaii Administrative Rules

Date, _____

1. Chapter 15-150, Hawaii Administrative Rules, entitled "Rules Governing Special Management Areas and Shoreline Areas within Community Development Districts and Practice and Procedures before the Office of Planning" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 1

OFFICE OF PLANNING

CHAPTER 150

RULES GOVERNING SPECIAL MANAGEMENT AREAS AND SHORELINE
AREAS WITHIN COMMUNITY DEVELOPMENT DISTRICTS AND
PRACTICE AND PROCEDURES BEFORE THE OFFICE OF PLANNING

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Historical Note: This chapter is based substantially upon Chapter 1-2, HAR [Eff 5/24/90; R 2/25/2000] and the practice and procedure pursuant to HRS §§ 91-2, 206E-8.5, and chapter 205A, parts II and III 150-1.

SUBCHAPTER 1

GENERAL PROVISIONS

§15-150-1 Purpose. The purpose of this chapter is to govern the practice and procedure before the office of planning in determining approval of development in special management areas, and structures and activities within shoreline setback areas of community development districts. This chapter shall be liberally construed to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. Special controls on developments within an area along the shoreline are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure that adequate public access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-21, 206E-8.5) (Imp: HRS §91-2)

§15-150-2 Definitions. As used in this chapter, unless a different meaning clearly appears from the context:

"Agency" means any agency, board, commission, department, or officer of a county government or the state government, including the authority as defined in part [II] I of chapter 205A, Hawaii Revised Statutes (HRS).

"Applicant" means any individual, organization, partnership, or corporation, including any utility, and any agency of government.

"Beach" means a coastal landform primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, that is established and shaped by wave action and tidal processes. "Beach" includes sand deposits in nearshore submerged areas, or sand dunes or upland beach deposits landward of the shoreline, that provide benefits for public use and recreation, for coastal ecosystems, and as a natural buffer against coastal hazards.

"Coastal hazards" means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.

"Coastal zone management area" means all lands of the State and the area extending seaward from the shoreline to the limit of the State's police power and management authority, including the United States territorial sea.

"Coastal zone management program" means the comprehensive statement in words, maps, or other permanent media of communication, prepared, approved for submission, and amended by the State and approved by the United States government pursuant to Public Law No. 92-583, as amended, and the federal regulations adopted pursuant thereto, which describes objectives, policies, laws, standards, and procedures to guide and regulate public and private uses in the coastal zone management area.

"Community development district" means an area designated by statute as authorized by chapter 206E, HRS.

"County" means the county of Hawaii, the city and county of Honolulu, the county of Kauai, or the county of Maui.

"Crops" mean agricultural produce or parts of plants or trees cultivated for commercial or personal use, including but not limited to livestock.

"Development" means any of the uses, activities, or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (2).

- (1) "Development" includes but is not limited to the following:
 - (A) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - (B) Grading, removing, dredging, mining, or extracting of any materials;
 - (C) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - (D) Change in the density or intensity of use of water, ecology related thereto, or of access thereto; and
 - (E) Construction, reconstruction, [demolition], or alteration of the size of any structure.
- (2) "Development" does not include the following:
 - (A) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area, is not situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion, and is not part of a larger development;
 - (B) Repair or maintenance of roads and highways within existing rights-of-way;

- (C) Routine maintenance dredging of existing streams, channels, and drainage ways
- (D) The repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (E) Zoning variances, except for height, density, parking, and shoreline setback;
- (F) Repair, maintenance, or interior alterations to existing structures;
- (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (H) The use of any land for the purpose of cultivating, planting, growing, and harvesting of plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes subject to review by the lead agency in accordance with paragraph (3);
- (I) The transfer of title to land;
- (J) The creation or termination of easements, covenants, or other rights in structures or land;
- [(K) Final subdivision approval;]
- [(L)] (K) The subdivision of land into lots greater than twenty acres in size;
- [(M)] (L) The subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that the land which is subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

- [(N)] (M) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
 - [(O)] (N) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
 - [(P)] (O) Nonstructural improvements to existing commercial or noncommercial structures; and
 - [(Q)] (P) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens.
- (3) Whenever the lead agency finds that any use, activity, or operation excluded in paragraph (2) may have a cumulative impact, or a significant environmental or ecological effect on the special management area, that use, activity, or operation shall be defined as "development" for the purpose of this chapter.

"Director" means the director of the office of planning, or authorized subordinate or designee.

"Environmental Impact Statement" or "EIS" means an informational document prepared in compliance with the environmental quality commission's rules implementing chapter 343, HRS.

"Floor area" is defined as in the ordinances of the county where the development is proposed.

"Hardship" means that the applicant must show that:

- (1) The land in question cannot yield a reasonable return if used only for the purpose allowed by section 15-150-26;
- (2) The request of the applicant is due to unique circumstances and not to general conditions in the area so that the reasonableness of section 15-150-26 is not drawn into question; and
- (3) The use to be authorized by the variance will not change the essential character of

the area or be contrary to the intent or purpose of this chapter.

"Hearing officer" means a person or persons designated and authorized by the lead agency to conduct an agency hearing for the purpose of taking testimony, to report and submit the findings and recommendations to the lead agency on matters within the jurisdiction of the lead agency pursuant to this chapter.

"Land" means the earth, water, and air above, below, or on the surface.

"Lead agency" means the office of planning.

"Revetment" means a facing of stone, concrete, blocks, or similar material built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Shoreline area" means all of the land area between the shoreline setback line and mean sea level.

"Shoreline certification" means a signed statement by the chairperson of the board of land and natural resources that the shoreline is as located and shown on a map as of a certain date in accordance with section 205A-42, HRS, and chapter 13-222, for shoreline certifications.

"Shoreline setback line" means that line established in section 15-150-20.

"Shoreline survey" means a survey map showing the shoreline as determined by the board of land and natural resources in accordance with section 205A-42, HRS, and chapter 13-222, for shoreline certifications.

"Special management area" means the land extending inland from the shoreline as delineated on maps filed with the county.

"Special management area minor approval" means an action by the lead agency authorizing development, the valuation of which is not in excess of \$500,000 and

which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Special management area use approval" means an action by the lead agency authorizing development, the valuation of which exceeds \$500,000 or which may have a substantial adverse or ecological effect, taking into account potential cumulative effects.

"Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

"Valuation" shall be determined by the lead agency and means the estimated cost to replace the structure in kind, based on current replacement costs, or in the cases of other development, as defined in this section, the fair market value of the development.

"Vegetation growth" means any plant, tree, shrub, grass, or groups, clusters, or paths of the same naturally rooted and growing. [Eff 2/25/2000; am and comp 4/17/2009; am and comp 11/30/2012; am and comp 11/30/2012; am and comp] (Auth: HRS §§205A-1, 205A- 22, 205A-41, and 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

SUBCHAPTER 2

SPECIAL MANAGEMENT AREA

§15-150-3 Adoption. The special management area for community development districts shall be those established by the respective counties and shown on the special management area maps. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-4 Included area. The special management areas of the community development districts shall

include those areas so designated on the maps. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-5 Objectives and policies. The objectives and policies of this chapter shall be those contained in section 205A-2, HRS. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-6 Review guidelines. The following guidelines shall be used by the lead agency for the review of developments proposed in the special management area:

- (1) All development in the special management area shall be subject to reasonable terms and conditions set by the lead agency to ensure that:
 - (A) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;
 - (B) Adequate and properly located public recreation areas and wildlife preserves are reserved;
 - (C) Provisions are made for solid and liquid waste treatment, disposition, and management [which] that will minimize adverse effects upon special management area resources;
 - (D) Alterations to existing landforms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources, beaches, coastal dunes, and

- scenic and recreational amenities and [minimum danger of] minimize impacts from floods, wind damage, storm surge, landslides, erosion, sea level rise, siltation, or failure in the event of earthquake; and
- (E) Artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purposes does not directly illuminate the shoreline and ocean waters and is not directed to travel across property boundaries toward the shoreline and ocean waters, except as provided in sections 205A-30.5(b) and 205A-71(b), HRS.
- (2) No development shall be approved unless the lead agency has first found that:
- (A) The development will not have any [substantial] significant adverse environmental or ecological effect except as [such] any adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or compelling public interest. [Such] Those adverse effect shall include[,] but not be limited to[,] the potential cumulative impact of individual developments, each [one] of which taken [in] by itself might not have a [substantial] significant adverse effect and the elimination of planning options; and
 - (B) The development is consistent with the objectives and policies established in section 205A-2, HRS, and the special management area guidelines contained in section 205A-26, HRS.
- (3) The lead agency shall seek to minimize, where reasonable:
- (A) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon;

- (B) Any development [which] that would reduce the size of any beach or other area usable for public recreation;
- (C) Any development [which] that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area and the mean high tide line where there is no beach;
- (D) Any development [which] that would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast;
- (E) Any development [which] that would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land. [Eff 2/25/2000; am and comp 4/17/2009; comp 11/30/2012; am and comp] (Auth: HRS §§205A-26, 205A-30.5, 205A-71, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-7 Assessment procedures and guidelines.
All development within the special management area of a community development district shall be subject to assessment by the lead agency under the provisions of this chapter. The assessment shall be pursuant to the objectives, policies, and guidelines of this chapter. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-27, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-8 General information. Any applicant contemplating development within the special management area shall contact the lead agency for information regarding procedures and general information to assist in processing development applications. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-9 Filing requirements. Before the proposed development shall be accepted for approval consideration, any applicant shall file with the lead agency the following:

- (1) A completed application form [which] that can be obtained from the lead agency;
- (2) A tax map key identification of the property on which the applicant proposes its development;
- (3) A plot plan of the property, drawn to scale;
- (4) A written description of the proposed development and a statement of objectives, and an estimate of the valuation of the development;
- (5) A written description of the affected environment [which] that addresses the development's technical and environmental characteristics;
- (6) A shoreline certification if the parcel abuts the shoreline; provided that the lead agency may waive a shoreline certification requirement if:
 - (A) The shoreline is fixed by an artificial structure or structures [which] that have been approved by all appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure; or
 - (B) The shoreline is fixed by natural stabilized geographic features such as cliffs and rock formations; and

- (7) Any other relevant plans or information pertinent to the analysis of the development required by the lead agency. [Eff 2/25/2000; am and comp 4/17/2009; comp 11/30/2012; am and comp _____] (Auth: HRS §206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-10 Assessment. Upon compliance with the foregoing requirements, the lead agency shall notify the applicant in writing within seven working days of receipt that the application has been accepted. The lead agency shall assess the proposal based on the following criteria:

- (1) The valuation or fair market value of the development; and
- (2) The potential effects and the significance of each effect according to the objectives, policies, and review guidelines contained in sections 15-150-5 and 15-150-6, and the provisions of chapter 343, HRS, and the environmental quality commission's EIS rules. [Eff 2/25/2000; comp 4/17/2009; am and comp 11/30/2012; comp _____] (Auth: HRS §§205A-29, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-11 Determination. The lead agency shall, within thirty days after submission of the completed information for a proposed development, notify the applicant in writing that the director has determined the proposal to:

- (1) Be exempt from the preparation of an environmental assessment under chapter 343, HRS, where the lead agency finds the proposal is exempt under section 11-200-8 of the environmental quality commission's EIS rules;

§15-150-12 Environmental assessment requirements. (a) The negative declaration and EIS preparation notices shall contain all the information required to be presented under the environmental quality commission's EIS rules.

(b) The lead agency shall assure that the public is informed of the director's determinations on special management area use approvals through publication of notices in the Office of Environmental Quality Control Bulletin or another publication.

(c) In processing a negative declaration or environmental impact statement preparation notice, the lead agency shall adhere to chapter 343, HRS, and the environmental quality commission's EIS rules.

(d) Any development which has been assessed under the National Environmental Policy Act or chapter 343, HRS, and a negative declaration has been filed or a required EIS has been accepted may be waived from the environmental assessment requirements in this chapter. [Eff 2/25/2000; comp 4/17/2009; com 11/30/2012; comp] (Auth: HRS §§205A-27, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-13 Public hearings. (a) A public hearing shall be held on all proposed developments declared by the lead agency to require a special management area use approval.

(b) The lead agency shall hold a public hearing at a date set no less than twenty-one nor more than sixty calendar days after the date the application has been accepted by the lead agency for consideration, unless the sixty-day period is waived by the applicant.

(c) The applicant shall publish a notice [statewide,] in accordance with section 1-28.5 and section 205A-29, HRS, as amended, at least twenty calendar days in advance, stating the nature of the proposed development for which an application is made and the time and place of the public hearing.

(d) The applicant shall submit to the lead agency proof that the notice of public hearing was published correctly.

(e) The applicant shall give notice of the public hearing by certified mail at least fifteen days prior to the public hearing to the pertinent neighborhood boards, the owners of all property within three hundred feet of the affected property, to all owners of the property described in the application, and to persons who have requested in writing to the lead agency to be notified of special management area use hearings or applications; and at least five days prior to the public hearing, the applicant shall submit to the lead agency proof that the notices in this subsection were given.

(f) A public hearing shall be held in the county where the development is proposed. Any such hearing may be held jointly and concurrently with any other hearing required for the same proposed development.

(g) During the public hearing, interested persons shall be given an opportunity to provide testimony and/or ask questions. The hearings officer may require the applicant to answer the questions.

(h) Upon notification of a public hearing, the applicant shall pay the State a nonrefundable application filing fee of \$200. Such filing fee shall be waived for public agency projects. [Eff 2/25/2000; comp 4/17/2009; am and comp 11/30/2012; am and comp] (Auth: HRS §§205A-29, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-14 Hearing officer. (a) The lead agency may designate a hearing officer to conduct the public hearing.

(b) Within ten working days from the public hearing, the hearing officer shall transmit findings and recommendations, copies of all submitted written testimony, and a transcript of the testimony presented at the public hearing to the lead agency for its consideration and decision. [Eff 2/25/2000; comp

§15-150-14

4/17/2009; comp 11/30/2012; comp]
(Auth: HRS §§205A-29, 206E-8.5) (Imp: HRS §§91-2,
206E-8.5)

§15-150-15 Action by the lead agency. (a) Within sixty calendar days after the public hearing, unless an extension is agreed to by the applicant, the lead agency shall approve with or without conditions or deny any application for development in a special management area.

(b) Within ten working days from a determination pursuant to section 15-150-11(1) to (3) unless an extension is agreed to by the applicant, the lead agency shall grant or deny a special management area minor approval. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-29, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-16 Appeals. The public hearing shall constitute a contested case from which a right to appeal exists under section 91-14, HRS. Any appeal shall be filed with the circuit court within thirty days after service of lead agency's final decision in accordance with section 91-14, HRS. [Eff 2/25/2000; comp 4/17/2009; am and comp 11/30/2012; comp] (Auth: HRS §§91-9, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-17 Approval required. No development or structure shall be constructed within the special management area within a community development district without first obtaining a determination that the proposal is exempted or is approved pursuant to the provisions of this subchapter. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp]

(Auth: HRS §§205A-29, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-18 Approval or exemption to precede other permits. No agency authorized to issue any permits or variances pertaining to any development within the special management area of a community development district shall authorize any development unless approval is first received pursuant to the provisions of this subchapter. For the purpose of this section, Hawaii Community Development Authority community development plans and state land use district boundary amendments are not permits. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-29, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-19 Emergency approvals. (a) In case of emergency repairs to existing public utilities including, but not limited to, flood control structures, water, sewer, gas, and electric transmission lines, and highways, the respective governmental agency or public utility company is exempted from obtaining a special management area use approval pursuant to the requirements of this chapter. Two reports of any repair projects, valued in excess of \$500,000, shall be recorded with the lead agency, one within three days after the start of the project and the other upon its completion.

(b) In the event a disaster is impending or has been declared under county law, or under chapter 127 or 128, HRS, the requirements of this subchapter shall be waived. [Eff 2/25/2000; am and comp 4/17/2009; am and comp 11/30/2012; comp] (Auth: HRS §§205A-30, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

SUBCHAPTER 3

SHORELINE AREA

§15-150-20 Lines established. Shoreline setback lines are established in community development districts forty feet inland from the certified shoreline. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-43, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-21 Shoreline and setback lines to be shown on maps, etc. The shoreline and shoreline setback lines shall be shown on all maps, plats, plans, construction drawings, documents, and any similar material. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-43, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-22 Shoreline determination and certification. The shoreline shall be determined and certified in accordance with section 205A-42, HRS, and chapter 13-222 for shoreline certifications. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-42, 206E-8.5) (Imp: HRS §§91-2, 205A-42, 206E-8.5)

§15-150-23 Prohibited removal. The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited with the following exceptions:

- (1) The inadvertent taking from the shoreline area of the materials, [not in excess of one gallon per person per day, for reasonable, personal, noncommercial use;] such as those

- inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;
- (2) Where the mining or taking is authorized by a variance pursuant to section 15-150-26;
 - (3) The clearing of [the] these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5, HRS, provided that the sand removed shall be placed on adjacent areas unless [such] the placement would result in significant turbidity; [or]
 - (4) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing for purposes under section 46-12, HRS; provided that the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity[.];
 - (5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;
 - (6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution; or
 - (7) For the response to a public emergency or a state or local disaster. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; am and comp] (Auth: HRS §§205A-44, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-24 Prohibited structures. Structures are prohibited in the shoreline area without a variance pursuant to this chapter except as provided in section 15-150-25. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-44, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-25 Permitted structures. Structures in the shoreline area shall not need a variance if:

- (1) They were completed prior to June 22, 1970;
- (2) They received either a building permit, board of land and natural resources' approval, or shoreline setback variance prior to June 16, 1989;
- (3) They are outside the shoreline area when they receive either a building permit or board of land and natural resources' approval;
- (4) They are necessary for or ancillary to continuation of existing agriculture or aquaculture in the shoreline area on June 16, 1989;
- (5) Work being done consists of maintenance, repair, [reconstruction,] and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes; or
- (6) Work being done consists of repair of permitted structures; provided that the permitted structures may be repaired, but shall not be enlarged, rebuilt, or replaced within the shoreline area without a variance. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; am and comp]
(Auth: HRS §§205A-44, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-26 Variations. (a) All structures and activities within the shoreline area, otherwise prohibited shall require a variance. A variance may be granted for a structure or activity otherwise prohibited in this subchapter if the director finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to the following:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that the lead agency finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;
- (5) Boating, maritime, or water sports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under chapter 269, HRS;
- [(7) Facilities or improvements by public agencies;]
- [(8)] (7) Private facilities or improvements that are clearly in the public interest;
- [(9)] (8) Private facilities or improvements [which] that will [neither] not adversely affect beach processes [nor], result in flanking shoreline erosion, or artificially fix the shoreline; provided that the lead agency [also finds that] may consider any hardship that will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- [(10)] (9) Private facilities or improvements that may artificially fix the shoreline; provided that the lead agency [also finds that shoreline erosion is likely to cause] may consider hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; provided further that [the lead agency imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest;] a variance to artificially fix the shoreline shall not be granted in areas with sand beaches or where artificially fixing the shoreline may interfere with existing recreational and waterline activities unless the granting of

the variance is clearly demonstrated to be in the interest of the general public; or

[(11)](10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the lead agency also finds that moving of sand will not adversely affect beach processes, will not diminish the size of a public beach, and will be necessary to stabilize an eroding shoreline.

(b) No variance shall be granted unless appropriate conditions are imposed:

- (1) To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
- (2) To minimize risk of adverse impacts on beach processes;
- (3) To minimize risk of structures failing and becoming loose rocks, sharp or otherwise dangerous debris, or rubble on public property; and
- (4) To minimize adverse impacts on public views to, from, and along the shoreline.

[Eff 2/25/2000; am and comp 4/17/2009; comp 11/30/2012; am and comp]

(Auth: HRS §§205A-46, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-27 Review of plans. The lead agency shall review and approve or disapprove all plans submitted in accordance with this subchapter. The lead agency may require plans or data in addition to those specified. The lead agency may require changes in any plans or data submitted in order to obtain optimum compliance practicable to this subchapter that are reasonable and necessary. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp]
(Auth: HRS §§205A-43, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-28 Application for variance. (a) The lead agency shall receive and review plans for proposed structures, facilities, or activities that are prohibited within the shoreline area upon the submission of adequate plans and data attached to a properly executed application form requesting a variance through the lead agency.

(b) A completed application shall include the filing requirements contained in section 15-150-9.

(c) The application must be accompanied by a filing fee of \$200. In the event of a joint public hearing with a special management area use approval, only one filing fee shall be required.

(d) The applicant must provide certification by the owner or lessee of the property authorizing and condoning the application. [Eff 2/25/2000; comp 4/17/2009; am and comp 11/30/2012; comp] (Auth: HRS §§205A-43, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-29 Environmental assessment. (a) The lead agency shall, within thirty days after submission of the completed information for a proposed shoreline area structure or activity, assess the environmental effects of the proposed structure or activity in accordance with the environmental quality commission's EIS rules implementing chapter 343, HRS, and determine if an EIS is required. The lead agency shall notify the applicant by certified mail of the environmental assessment determination.

(b) Whenever a special management area use approval and a shoreline variance are required for the same development proposal, the assessment and determination procedures and environmental assessment requirements contained in sections 15-150-10, 15-150-11, and 15-150-12, apply. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-43, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-30 Public hearing. The public hearing procedures contained in sections 15-150-13 and 15-150-14 apply to shoreline variance applications, except that the lead agency may waive a public hearing prior to action on a variance application for:

- (1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;
- (2) Protection of a legal structure [costing more than \$20,000,] or public facility, including any facility owned by a public utility that is regulated pursuant to chapter 269, HRS, that does not fix the shoreline, under an emergency authorization issued by the lead agency; provided that the structure or public facility is at risk of immediate damage from shoreline erosion[;] and the authorization does not exceed three years;
- (3) Other structures or activities, provided that no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application; or
- (4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, [which] that result in little or no interference with natural shoreline processes. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; am and comp] (Auth: HRS §§205A-43.5, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-31 Decision. Within sixty days after the hearing on the application for a variance unless an extension is agreed to by the applicant, the director shall render a written decision for approval or disapproval. In cases where action is required on both a shoreline setback variance and a special management area use approval, the director may grant a variance

in conjunction with the special management area use approval. The provisions contained in section 15-150-16 apply to this section. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-43, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

SUBCHAPTER 4

ENFORCEMENT

§15-150-32 Penalties. (a) Any person who violates subchapter 2 or 3 shall be liable as follows:

- (1) For a civil fine not to exceed \$100,000; or
- (2) For the cost of returning the affected environment or ecology within the coastal management area to the condition existing before the violation.

(b) In addition to any other penalties, any person who violates subchapter 2 or 3 shall be liable for a civil fine not to exceed \$10,000 a day for each day the violation occurred or persists.

(c) Any civil fine or other penalty provided under this chapter may be imposed by the circuit court or may be imposed by the lead agency after an opportunity for a hearing as provided in this subchapter. Imposition of a fine shall not be a prerequisite to any civil fine or other injunctive relief ordered by the circuit court. [Eff 2/25/2000; am and comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A-32, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-33 Enforcement of shoreline setbacks.

(a) The lead agency shall enforce subchapter 3. Any structure or activity prohibited by sections 15-150-23 and 15-150-24, that has not received a variance pursuant to subchapter 3 or complied with conditions

on a variance, shall be removed or corrected. No other state or county permit or approval shall be construed as a variance pursuant to subchapter 3.

(b) Where the shoreline is affected by a manmade structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then for purposes of enforcement of this section, the structure shall be construed to be entirely within the shoreline area.

(c) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under section 183-41, HRS, shall not be diminished by a manmade structure in violation of subchapter 3. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp]
(Auth: HRS §§205A-43.5, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-34 Issuance of notice of violation and order. (a) If the director determines that any person is violating any provision of this chapter or any condition of approval issued pursuant to this chapter, the lead agency may have the person served, by mail or personal delivery, with a notice of violation and order.

(b) The notice of violation shall include at least the following information:

- (1) Date of the notice;
- (2) The name and address of the person noticed;
- (3) The section of the rules that has been violated;
- (4) The nature of the violation; and
- (5) The location and time of the violation.

(c) The order shall advise the person that the order is considered final twenty days after the date of its mailing or delivery unless written request for a hearing is mailed or delivered to the lead agency within the twenty days and may require the person to do any or all of the following:

- (1) Cease and desist from the violation;

- (2) Correct the violation at the person's own expense before a date specified in the order;
- (3) Pay a civil fine not to exceed \$100,000 in the manner, at the time, place, and before the date specified in the order;
- (4) Pay a civil fine not to exceed \$10,000 for each day in which the violation persists, in the manner and at the time and place specified in the order, if the person has performed any development in violation of this chapter; or
- (5) Appear before the lead agency at a time and place specified in the order and answer the charges specified in the notice of violation. [Eff 2/25/2000; comp 4/17/2009; am and comp 11/30/2012; comp]
(Auth: HRS §§91-9, 205A-5, 205A-32, 205A-43.5, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-35 Effect of the order; right to a hearing. (a) The provisions of the order issued by the director pursuant to this subchapter shall become final twenty days after the date of the mailing or personal delivery of the order unless within those twenty days the person subject to the order requests in writing a hearing before the lead agency. The request for a hearing shall be considered timely if the written request is delivered or mailed and postmarked to the lead agency within the twenty days.

(b) Upon receipt of the written request for hearing, the lead agency shall specify a time and place for the hearing, subject to the order, to appear and be heard. The hearing shall be conducted by the lead agency in accordance with chapter 91, HRS. Following the hearing, the director may affirm, modify, or rescind the order. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp]
(Auth: HRS §§91-9, 91-9.5, 91-12, 205A-32, 206E-8.5)
(Imp: HRS §§91-2, 206E-8.5)

§15-150-36 Judicial enforcement of the order.

The director may institute a civil action in any court of competent jurisdiction to enforce any order issued pursuant to these rules. Where the civil action has been instituted to enforce the civil fine imposed by the order, the director need only show that the notice of violation and order were served; a hearing was held or the time granted to request a hearing had expired without a request; a civil fine was imposed; and that the fine imposed has not been paid. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§91-14, 205A-32, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-37 Judicial enforcement of rules.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of these rules or any condition attached to an approved application issued in accordance with these rules in addition to any other remedy provided for under these rules. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§205A- 33, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

§15-150-38 Appeal in accordance with statute.

If any person is aggrieved by the order issued by the director pursuant to this chapter, the person may appeal the order pursuant to chapter 91, HRS, provided that no provision of the order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction. [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp] (Auth: HRS §§91A-14, 91-15, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5) SUBCHAPTER 5

SEVERABILITY

§15-150-39 Invalid provisions. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provision or application of conditions of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable." [Eff 2/25/2000; comp 4/17/2009; comp 11/30/2012; comp _____] (Auth: HRS §§91-16, 206E-8.5) (Imp: HRS §§91-2, 206E-8.5)

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

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

4. These amendments to and compilation of chapter 15-150, 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.

MARY ALICE EVANS
Director of Office of Planning

APPROVED AS TO FORM:

Alison Kato

Deputy Attorney General