

**Supporting Documents for the Hawai'i CZM Program Change Request**

**Act 35, Session Laws of Hawai'i (SLH) 2022, Relating to Aquatic Resources**

Hawai'i Revised Statutes (HRS) § 187A-12.5 General administrative penalties for violations of aquatic resources

HRS § 187A-13 General penalty; community services for violations of aquatic resources

HRS § 188-70 Penalties for violations of fishing rights and regulations

HRS § 189-4 Penalties for violations of commercial fishing

HRS § 190-5 Penalty for violations of marine life conservation program

## ACT 35

H.B. NO. 1653

A Bill for an Act Relating to Aquatic Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii's aquatic resources are of significant economic, ecologic, cultural, and aesthetic importance to agriculture, tourism, food production, and fisheries in the State. The legislature recognizes the importance of managing and conserving Hawaii's aquatic resources and ecosystem for present and future generations. Careful stewardship and protection of Hawaii's aquatic resources are essential to the well-being of the State.

The purpose of this Act is to strengthen the penalties for violations of the State's aquatic resources law by:

- (1) Establishing a tiered administrative fine system for each specimen of aquatic life taken, killed, or injured;
- (2) Establishing a criminal fine structure on a per-specimen basis for violations involving aquatic life;
- (3) Authorizing the department of land and natural resources to recommend community service that benefits the resource damaged when a person is ordered to perform community service in lieu of a fine; and
- (4) Authorizing the department of land and natural resources to recommend to the court that defendants be restricted from entering specific geographical areas where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams.

SECTION 2. Section 187A-12.5, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) [In addition to subsection (b), a fine of up to \$5,000] A fine in addition to the fine under subsection (b) may be levied for each specimen of threatened or endangered aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder[-] as follows:

- (1) For a first violation, up to \$5,000 or the retail market value of the specimen, whichever is higher;
- (2) For a second violation, up to \$10,000 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent violation, up to \$15,000 or the retail market value of the specimen, whichever is higher.

(e) [In addition to subsection (c), a fine of up to \$1,000] A fine in addition to the fine under subsection (c) may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder[-] as follows:

- (1) For a first violation, up to \$1,000 or the retail market value of the specimen, whichever is higher;
- (2) For a second violation, up to \$2,000 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent violation, up to \$3,000 or the retail market value of the specimen, whichever is higher.”

SECTION 3. Section 187A-13, Hawaii Revised Statutes, is amended to read as follows:

**“§187A-13 General penalty; community service.** (a) Any person violating this chapter or any rule adopted thereunder for which a penalty is not oth-

erwise provided, shall be guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(b) A fine in addition to the fine under subsection (a) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

~~[(b)]~~ (c) The court may require the defendant to complete an aquatic resources educational class administered by the department in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

~~[(e)]~~ (d) The court may direct the defendant to perform community service as administered by the department in lieu of paying any monetary fine authorized by this section[-]; provided that if community service is ordered pursuant to this subsection, the department may recommend to the court an order of community service that benefits the resource that was damaged.

(e) The department may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life.”

SECTION 4. Section 188-70, Hawaii Revised Statutes, is amended to read as follows:

**“§188-70 Penalties.** (a) Any person violating any provision of or any rule adopted pursuant to this chapter, except sections 188-23, 188-39.5, and 188-40.8, is guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined no less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(b) A fine in addition to the fine under subsection (a) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$100 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$200 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$500 or the retail market value of the specimen, whichever is higher.

~~[(b)]~~ (c) Any person violating section 188-23, is guilty of a class C felony and shall be sentenced pursuant to chapter 706; provided that the environmental court, in addition to any term of imprisonment or any other terms and con-

ditions of probation, shall order the defendant to pay a fine of not less than \$1,000. Notwithstanding section 706-669 and any other law to the contrary, any person in violation of section 188-23(b), as a first offense, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole of thirty days. Repeat offenders shall be sentenced pursuant to chapter 706.

~~[(e)]~~ (d) The environmental court may require the defendant to complete an aquatic resources educational class administered by the department of land and natural resources in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

~~[(d)]~~ (e) The environmental court may direct the defendant to perform community service as administered by the department of land and natural resources in lieu of paying any monetary fine authorized by this section~~[-];~~ provided that if community service is ordered pursuant to this subsection, the department of land and natural resources may recommend to the environmental court an order of community service that benefits the resource that was damaged.

(f) The department of land and natural resources may recommend to the environmental court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life.”

SECTION 5. Section 189-4, Hawaii Revised Statutes, is amended to read as follows:

**“§189-4 Penalties.** (a) Any person violating any of the provisions of this chapter for which a penalty is not otherwise provided, or any rule of the department adopted thereunder, shall be guilty of a petty misdemeanor and punishable as provided in subsection (b); provided that in the case of a corporation violating any of the provisions, only the fine shall be imposed, but any officer of the corporation who wilfully procures or permits the violation of the provisions by the corporation shall be punishable as in the case of an individual violating the same.

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(c) A fine in addition to the fine under subsection (b) may be levied for each specimen of aquatic life taken, killed, injured, or sold in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

~~[(e)]~~ (d) The fines specified in this section shall not be suspended or waived.

(e) The department may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life.”

SECTION 6. Section 190-5, Hawaii Revised Statutes, is amended to read as follows:

**“§190-5 Penalty.** (a) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued under section 190-4, shall be guilty of a petty misdemeanor and punished as provided in subsections (b) ~~[and (c)], (c), and (d).~~

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(c) A fine in addition to the fine under subsection (b) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

~~[(e)]~~ (d) The court may require the defendant to complete an aquatic resources educational class administered by the department of land and natural resources in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

~~[(d)]~~ (e) The court may allow the defendant to perform community service as administered by the department of land and natural resources in lieu of paying any monetary fine authorized by this section~~[-]; provided that if community service is ordered pursuant to this subsection, the department of land and natural resources may recommend to the court an order of community service that benefits the resource that was damaged.~~

(f) The department of land and natural resources may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2022.

(Approved June 8, 2022.)

## CHAPTER 187A AQUATIC RESOURCES

### Part I. General Provisions

#### Section

- [187A-1](#) Definitions
- [187A-1.5](#) State marine waters
- [187A-1.6](#) Applicability of statutes and rules
- [187A-2](#) Powers and duties of department
- [187A-3](#) Repealed
- [187A-3.5](#) Aquaculturist license and license to sell prohibited aquatic life
- [187A-4](#) Administrator
- [187A-5](#) Rules
- [187A-5.5](#) Consistency of state and federal fisheries regulations
- [187A-6](#) Special activity permits
- [187A-6.5](#) Release and confiscation of harmful aquatic life
- [187A-7](#) Expenditures
- [187A-8](#) Cooperation with other governmental authorities
- [187A-9](#) Federal aid in sport fish restoration
- [187A-9.5](#) Sport fish special fund
- [187A-10](#) Agents to sell licenses
- [187A-11](#) Repealed
- [187A-12](#) University of Hawaii may use land, etc.
- [187A-12.4](#) Misrepresentation or false statement in receipts and reports
- [187A-12.5](#) General administrative penalties
- [187A-13](#) General penalty; community service
- [187A-14](#) Informer's fee
- [187A-15](#) Rights of inspection of catch

### Part II. Fishing Rights

- [187A-21](#) Public fishing grounds
- [187A-22](#) Use of adjoining lands
- [187A-23](#) Konohiki rights

### Part III. Alien Aquatic Organisms

- [187A-31](#) Definitions
- [187A-32](#) Alien aquatic organisms; lead agency; rules

Part IV. Aquatic Mitigation Banking and Aquatic  
In-Lieu Fee Mitigation

[187A-41](#) Aquatic mitigation banking and aquatic in-lieu fee  
mitigation

[187A-42](#) Rules

Part V. Ocean Stewardship

[187A-51](#) Ocean stewardship special fund

[187A-52](#) Ocean stewardship user fee

### **Cross References**

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

### **Law Journals and Reviews**

Protecting Hawai`i's Fisheries: Creating an  
Effective Regulatory Scheme to Sustain Hawai`i's Fish  
Stocks. 29 UH L. Rev. 243 (2006).

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**§187A-12.5 General administrative penalties.** (a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 5 of title 12 or any rule adopted thereunder.

(b) For violations involving threatened or endangered species, the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$10,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$15,000.

(c) For all other violations the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$1,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000.

(d) A fine in addition to the fine under subsection (b) may be levied for each specimen of threatened or endangered aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder as follows:

- (1) For a first violation, up to \$5,000 or the retail market value of the specimen, whichever is higher;
- (2) For a second violation, up to \$10,000 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent violation, up to \$15,000 or the retail market value of the specimen, whichever is higher.

(e) A fine in addition to the fine under subsection (c) may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder as follows:

- (1) For a first violation, up to \$1,000 or the retail market value of the specimen, whichever is higher;
- (2) For a second violation, up to \$2,000 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent violation, up to \$3,000 or the retail market value of the specimen, whichever is higher.

(f) Any criminal penalty for any violation of subtitle 5 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from recovering additional administrative fines, fees, and costs, including attorney's fees and costs. [L 1998, c 243, §1; am L 2022, c 35, §2]

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**§187A-13 General penalty; community service.** (a) Any person violating this chapter or any rule adopted thereunder for which a penalty is not otherwise provided, shall be guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(b) A fine in addition to the fine under subsection (a) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

(c) The court may require the defendant to complete an aquatic resources educational class administered by the department in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

(d) The court may direct the defendant to perform community service as administered by the department in lieu of paying any monetary fine authorized by this section; provided that if community service is ordered pursuant to this subsection, the department may recommend to the court an order of community service that benefits the resource that was damaged.

(e) The department may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life. [L 1985, c 94, pt of §1; am L 1999, c 195, §3; am L 2016, c 67, §1; am L 2022, c 35, §3]

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## CHAPTER 188

### FISHING RIGHTS AND REGULATIONS

#### Part I. Fishing Rights--Repealed

##### Section

[188-1](#) to 14 Repealed

#### Part II. Fishing Regulations, Generally

[188-21](#), 22 Repealed

[188-22.5](#) State marine waters

[188-22.6](#) Designation of community-based subsistence fishing area

[188-22.7](#) Miloli`i fisheries management area

[188-22.8](#) Limu management area

[188-22.9](#) Ha`ena community-based subsistence fishing area; restrictions; regulations

[188-23](#) Possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited; exception

[188-23.5](#) Possession or use of unmanned aerial vehicles on, in, or near state marine waters prohibited; exception

[188-24](#) to 30.5 Repealed

[188-31](#) Permits to take aquatic life for aquarium purposes

[188-31.5](#) Aquarium fish for export; monthly count

[188-32](#), 33 Repealed

[188-34](#) Fishing in Honolulu harbor, Hilo harbor, restricted

[188-35](#) Fishing in certain waters

[188-36](#) Hawaii marine laboratory refuge

[188-37](#) Fishing in the Northwestern Hawaiian Islands

[188-38](#), 39 Repealed

[188-39.5](#) Rays; hīhīmanu; hāhālua; hailepo; lupe; prohibitions, penalties, and fines

[188-40](#), 40.5 Repealed

[188-40.6](#) Shark feeding; prohibitions; exceptions; penalties

[188-40.7](#) Shark fins; prohibited

[188-40.8](#) Sharks; mano; prohibitions; exceptions; penalties and fines

[188-41](#), 42 Repealed

[188-42.5](#) Hihiwai, hapawai, and opae kala`ole selling prohibited

[188-43](#) Hinana and oopu, taking of, prohibited

[188-44](#) Licenses for mullet

- [188-45](#) Licenses for nehu, iao, and other baitfish
- [188-46](#) to 49 Repealed
- [188-50](#) License; application; fees; restrictions
- [188-51](#) to 52.5 Repealed
- [188-53](#) Fishing reserves, refuges, and public fishing areas
- [188-54](#) to 56 Repealed
- [188-57](#) Licenses for certain crustaceans
- [188-58](#) Repealed
- [188-58.5](#) Repealed
- [188-59](#) to 67 Repealed
- [188-68](#) Permits for coral and rock with marine life attached
- [188-70](#) Penalties
- [188-71](#) Harassment of fishermen; prohibition
- [188-72](#) Nonresident recreational marine fishing license; application; fees; restrictions

### **Cross References**

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Taking a monk seal prohibited, see §195D-4.5.

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**§188-70 Penalties.** (a) Any person violating any provision of or any rule adopted pursuant to this chapter, except sections 188-23, 188-39.5, and 188-40.8, is guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined no less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(b) A fine in addition to the fine under subsection (a) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$100 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$200 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$500 or the retail market value of the specimen, whichever is higher.

(c) Any person violating section 188-23, is guilty of a class C felony and shall be sentenced pursuant to chapter 706; provided that the environmental court, in addition to any term of imprisonment or any other terms and conditions of probation, shall order the defendant to pay a fine of not less than \$1,000. Notwithstanding section 706-669 and any other law to the contrary, any person in violation of section 188-23(b), as a first offense, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole of thirty days. Repeat offenders shall be sentenced pursuant to chapter 706.

(d) The environmental court may require the defendant to complete an aquatic resources educational class administered by the department of land and natural resources in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

(e) The environmental court may direct the defendant to perform community service as administered by the department of land and natural resources in lieu of paying any monetary fine authorized by this section; provided that if community service is ordered pursuant to this subsection, the department of land and natural resources may recommend to the environmental court an order of community service that benefits the resource that was damaged.

(f) The department of land and natural resources may recommend to the environmental court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life. [L 1981, c 85, §77; am L 1988, c 374, §2; am L 1993, c 256, §4; am L 1999, c 195, §6; am L 2009, c 92, §3; am L 2014, c 218, §8; am L 2016, c 67, §2; am L 2017, c 12, §10; am L 2021, c 51, §3; am L 2022, c 35, §4]

### **Cross References**

General administrative penalties, see §187A-12.5.

### **Case Notes**

As sentencing court limited to alternatives expressly enumerated in this section and probation not an enumerated alternative, offense of fishing with gill nets under §188-30.2 nonprobationable; thus, under §853-4(5), deferred acceptance of no contest plea not allowed for that offense. 87 H. 102, 952 P.2d 390 (1998).

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## CHAPTER 189 COMMERCIAL FISHING

### Part I. License and Regulation

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- [189-1](#) Repealed
- [189-1.5](#) State marine waters
- [189-2](#) Commercial marine license and commercial marine vessel license
- [189-2.4](#) Commercial fisheries special fund
- [189-2.5](#) Longline fishing; description; prohibition
- [189-3](#) Monthly catch report
- [189-3.5](#) Catch report; shared jurisdiction of fisheries
- [189-4](#) Penalties
- [189-5](#) Aliens not admitted to United States
- [189-6](#) Licenses for marine life from waters not within state jurisdiction
- [189-7](#) to 9 Repealed
- [189-10](#) Commercial marine dealers
- [189-11](#) Receipts in duplicate
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### Part II. Large Fishing Vessel Purchase, Construction, Renovation, Maintenance, and Repair Loan Program

- [189-21](#) Definitions
- [189-22](#) Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan program
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### Part III. Fisherman Training

- [189-31](#) to 35 Repealed

### Part IV. Hawaii Small Fishing Vessel Loan Program

- [189-41](#) Findings and purpose

[189-42](#) Definitions

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[189-45](#) Loans, terms, and restrictions

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### **Cross References**

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

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**§189-4 Penalties.** (a) Any person violating any of the provisions of this chapter for which a penalty is not otherwise provided, or any rule of the department adopted thereunder, shall be guilty of a petty misdemeanor and punishable as provided in subsection (b); provided that in the case of a corporation violating any of the provisions, only the fine shall be imposed, but any officer of the corporation who wilfully procures or permits the violation of the provisions by the corporation shall be punishable as in the case of an individual violating the same.

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(c) A fine in addition to the fine under subsection (b) may be levied for each specimen of aquatic life taken, killed, injured, or sold in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

(d) The fines specified in this section shall not be suspended or waived.

(e) The department may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life. [L 1929, c 187, §5; RL 1935, §334; RL 1945, §1259; am L 1947, c 39, §5; am L 1949, c 272, §5; am L 1955, c 96, §5; RL 1955, §21-114; HRS §189-4; am L 1981, c 85, §81; am L 1999, c 195, §7; am L 2022, c 35, §5]

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## CHAPTER 190 MARINE LIFE CONSERVATION PROGRAM

### Section

- [190-1](#) Conservation area; administration
- [190-1.5](#) State marine waters
- [190-2](#) Establishment and modifications of conservation district
- [190-3](#) Rules
- [190-4](#) Permits
- [190-4.5](#) Anchoring, boating, and mooring in marine life conservation districts; rules
- [190-5](#) Penalty

### Note

L 2014, c 218, §8 purports to amend this chapter.

### Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

### Law Journals and Reviews

Protecting Hawai`i's Fisheries: Creating an Effective Regulatory Scheme to Sustain Hawai`i's Fish Stocks. 29 UH L. Rev. 243 (2006).

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**§190-5 Penalty.** (a) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued under section 190-4, shall be guilty of a petty misdemeanor and punished as provided in subsections (b), (c), and (d).

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(c) A fine in addition to the fine under subsection (b) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

(d) The court may require the defendant to complete an aquatic resources educational class administered by the department of land and natural resources in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

(e) The court may allow the defendant to perform community service as administered by the department of land and natural resources in lieu of paying any monetary fine authorized by this section; provided that if community service is ordered pursuant to this subsection, the department of land and natural resources may recommend to the court an order of community service that benefits the resource that was damaged.

(f) The department of land and natural resources may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life. [L 1955, c 192, §8; RL 1955, §21-137; HRS §190-5; am L 1981, c 16,

§4; am L 1999, c 195, §9; am L 2016, c 67, §3; am L 2022, c 35, §6]

### **Cross References**

General administrative penalties, see §187A-12.5.

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**Act 59, SLH 2023, Relating to Transportation**

HRS § 266-31 Restriction of use of facilities



## ACT 59

S.B. NO. 1505

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that illegal or harmful activity throughout the Pacific Ocean has been increasing. In many cases, foreign vessels have entered new areas of the Pacific Ocean to traffic illegal commodities. Other foreign vessels have frequently entered other nations' protected areas to collect resources to the detriment of local communities and are beginning to scout waters near Hawaii to conduct undersea mining that will irreparably harm Hawaii's undersea ecosystems.

Accordingly, the purpose of this Act is to restrict vessels that have been engaged in specific unpermitted or unlicensed activities from entering or departing ports in the State's commercial harbor system.

SECTION 2. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**“§266- Restriction of use of facilities.** The department of transportation may delay or deny approval for port entry or departure for any vessel for which the department has received notice from a federal agency or other agency that the vessel or its crew has engaged in activity that has violated any federal, state, or county law or rule pertaining to environmental protection, maritime transportation, trafficking of illegal contraband, or the collection or extraction of undersea minerals unlicensed or unpermitted by the State; provided that the department may grant approvals for use of any commercial harbor facility by that vessel in coordination with the federal agency or other agency.”

**ACT 59**

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.  
(Approved June 5, 2023.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## CHAPTER 266 HARBORS

### Part I. Generally

#### Section

- [266-1](#) Department of transportation; harbors; jurisdiction
- [266-1.5](#) Honolulu harbor Piers 1 and 2; jurisdiction
- [266-1.6](#) Hana harbor; jurisdiction
- [266-2](#) Powers and duties of department
- [266-2.2](#) Exemption from conservation district permitting and site plan approval requirements
- [266-2.3](#) Repealed
- [266-2.5](#) Outdoor lighting
- [266-3](#) Rules
- [266-4](#) Limitation of powers
- [266-4.5](#) Disposition of public land; reservation of right of way
- [266-5](#) Repealed
- [266-6](#) Expenditures
- [266-7](#) Department; duties
- [266-8](#) to 12 Repealed
- [266-13](#) Dockage
- [266-14](#) Demurrage, lien, foreclosure
- [266-15](#), 16 Repealed
- [266-17](#) Rates, how fixed
- [266-18](#) Repealed
- [266-19](#) Creation of harbor special fund; disposition of harbor special fund
- [266-19.5](#) Private financing of harbor improvements
- [266-20](#) to 21.3 Repealed
- [266-21.4](#) Marine inspections
- [266-21.5](#) Biosecurity, inspection, and cargo support facilities
- [266-22](#) Repealed
- [266-23](#) Acceptance of gifts
- [266-24](#) Enforcement
- [266-24.1](#) Arrest or citation
- [266-24.2](#) Vessels or property taken into legal custody; unauthorized control
- [266-25](#) Violation of rules; penalty
- [266-26](#) Responsibility of vessel owner; evidence of

unauthorized mooring

[266-27](#) Mooring of unauthorized vessel in state harbors;  
impoundment and disposal proceedings

[266-28](#) Fines arising from environmental protection  
and maritime transportation security violations

[266-29](#) State harbors civil violations system;  
authorization

[266-30](#) General administrative penalties

[266-31](#) Restriction of use of facilities

## Part II. Special Facility Projects

[266-51](#) Definitions

[266-52](#) Powers

[266-53](#) Findings and determination for special facility leases

[266-54](#) Special facility lease

[266-55](#) Special facility revenue bonds

[266-56](#) Repealed

### Note

Large capacity ferry vessel requirements. L Sp 2007 2d, c 2.

### Case Notes

Although this chapter did not explicitly confer authority over the Kewalo basin harbor on the Hawaii community development authority (HCDA), it was undisputed that (1) the legislature conveyed title to the fast and submerged lands within an area that includes the harbor to HCDA; (2) HCDA was given the mandate to redevelop the area that includes the harbor; and (3) HCDA was given broad rulemaking powers over its projects and properties to implement its mandate pursuant to §§206E-33 and 206E-4(5); thus, circuit court did not err by failing to find that the department of transportation had exclusive jurisdiction over harbor. 124 H. 313 (App.), 243 P.3d 273 (2010).

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**[§266-31] Restriction of use of facilities.** The department of transportation may delay or deny approval for port entry or departure for any vessel for which the department has received notice from a federal agency or other agency that the vessel or its crew has engaged in activity that has violated any federal, state, or county law or rule pertaining to environmental protection, maritime transportation, trafficking of illegal contraband, or the collection or extraction of undersea minerals unlicensed or unpermitted by the State; provided that the department may grant approvals for use of any commercial harbor facility by that vessel in coordination with the federal agency or other agency. [L 2023, c 59, §2]

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**Act 73, SLH 2020, Relating to Waste Management**

HRS § 183C-4 Zoning; amendments

HRS 342H-52 Prohibitions; buffer zones

## ACT 73

S.B. NO. 2386

A Bill for an Act Relating to Waste Management.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 183C-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall adopt rules governing the use of land within the boundaries of the conservation district that are consistent with the conservation of necessary forest growth, the conservation and development of land and natural resources adequate for present and future needs, and the conservation and preservation of open space areas for public use and enjoyment[-]; provided that no waste or disposal facility shall be located in a conservation district except in emergency circumstances where it may be necessary to mitigate significant risks to public safety and health; provided further that emergency circumstances shall not exceed three years. No use except a nonconforming use as defined in section 183C-5, shall be made within the conservation district unless the use is in accordance with a zoning rule.

For the purposes of this subsection:

“Emergency” means any actual or imminent natural or human-caused occurrence that results or likely will result in substantial injury or harm to the population or substantial damage to or loss of property.

“Waste or disposal facility” means any transfer station or landfill as defined in section 340A-1, open dump as defined in section 342H-1, solid waste reduction facility or waste reduction facility as defined in section 342G-1, disposal facility, or any other facility for the disposal of solid waste that is required by law to obtain a permit from the department of health. “Waste or disposal facility” excludes individual, state certified, non-industrial redemption centers.”

SECTION 2. Section 342H-52, Hawaii Revised Statutes, is amended to read as follows:

~~“[§342H-52] Prohibition.”~~ **Prohibitions; buffer zones.** (a) No person, including ~~[any federal agency,]~~ the State[, or any county, shall construct, operate, modify, expand, or close a municipal solid waste landfill unit, or any component of a municipal solid waste landfill unit, without first obtaining a permit from the director. All permits for municipal solid waste landfill units shall be subject to ~~[such]~~ any terms and conditions ~~[as]~~ that the director determines are necessary to protect human health or the environment.

(b) No person, including the State or any county, shall construct, modify, or expand a waste or disposal facility including a municipal solid waste landfill unit, any component of a municipal solid waste landfill unit, a construction and demolition landfill unit, or any component of a construction and demolition landfill unit without first establishing a buffer zone of no less than one-half mile around the waste or disposal facility. This subsection shall not apply to the continued operation of an existing waste or disposal facility that is properly permitted; provided that continued operation does not require physical expansion, vertical or horizontal, of the facility requiring additional permitting review and a permit modification.

For the purposes of this subsection:

“Buffer zone” means the distance between the edge of waste or waste activity and the nearest residential, school, or hospital property line.

“Waste or disposal facility” excludes individual, state certified, non-industrial redemption centers.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved September 15, 2020.)



## CHAPTER 183C CONSERVATION DISTRICT

### Section

[183C-1](#) Findings and purpose

[183C-2](#) Definitions

[183C-3](#) Powers and duties of the board and department

[183C-4](#) Zoning; amendments

[183C-5](#) Nonconforming uses

[183C-6](#) Permits and site plan approvals

[183C-7](#) Penalty for violation

[183C-8](#) Zoning order; appeal to circuit environmental  
court

[183C-9](#) Contested cases

### Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

### Attorney General Opinions

New administrative rules superseded old rules as to all matters except permit applications that were filed before July 1, 1994, when statutory authority for old rules was repealed. Att. Gen. Op. 97-4.

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**§183C-4 Zoning; amendments.** (a) The department, after notice and hearing as provided in this section, shall review and redefine the boundaries of the zones within the conservation district.

(b) The department shall adopt rules governing the use of land within the boundaries of the conservation district that are consistent with the conservation of necessary forest growth, the conservation and development of land and natural resources adequate for present and future needs, and the conservation and preservation of open space areas for public use and enjoyment; provided that no waste or disposal facility shall be located in a conservation district except in emergency circumstances where it may be necessary to mitigate significant risks to public safety and health; provided further that emergency circumstances shall not exceed three years. No use except a nonconforming use as defined in section 183C-5, shall be made within the conservation district unless the use is in accordance with a zoning rule.

For the purposes of this subsection:

"Emergency" means any actual or imminent natural or human-caused occurrence that results or likely will result in substantial injury or harm to the population or substantial damage to or loss of property.

"Waste or disposal facility" means any transfer station or landfill as defined in section 340A-1, open dump as defined in section 342H-1, solid waste reduction facility or waste reduction facility as defined in section 342G-1, disposal facility, or any other facility for the disposal of solid waste that is required by law to obtain a permit from the department of health. "Waste or disposal facility" excludes individual, state certified, non-industrial redemption centers.

(c) The department may allow a temporary variance from zoned use where good cause is shown and where the proposed temporary variance is for a use determined by the department to be in accordance with good conservation practices.

(d) The department shall establish zones within the conservation district, which shall be restricted to certain uses. The department, by rules, may specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use. The rules may control the extent, manner, and times of the uses, and may specifically prohibit unlimited cutting of forest growth, soil mining, or other activities detrimental to good conservation practices.

(e) Notwithstanding this section or any other law to the contrary, geothermal resources exploration and geothermal resources

development, as defined under section 182-1, shall be permissible uses in all zones of the conservation district. The rules required under subsection (b) governing the use of land within the boundaries of the conservation district shall be deemed to include the provisions of this section without necessity of formal adoption by the department.

(f) Whenever any landowner or government agency whose property will be directly affected makes an application to change the boundaries or land uses of any zone, or to establish a zone with certain land uses, or where the department proposes to make the change or changes itself, the change or changes shall be put in the form of a proposed rule by the applicant and the department shall then give public notice thereof during three successive weeks statewide and in the county in which the property is located. The notice shall be given not less than thirty days prior to the date set for the hearing, and shall state the time and place of the hearing and the changes proposed. Any proposed rules and the necessary maps shall be made available for inspection by interested members of the public. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. For the purpose of its public hearing or hearings, the board may summon witnesses, administer oaths, and require the giving of testimony. [L 1994, c 270, pt of §1; am L 1998, c 2, §49; am L 2012, c 97, §5; am L 2020, c 73, §1]

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## CHAPTER 342H

### SOLID WASTE POLLUTION

#### Part I. Definitions and General Provisions

##### Section

- [342H-1](#) Definitions
- [342H-2](#) Administration
- [342H-2.5](#) Department of health; delegation of enforcement powers
- [342H-3](#) Duties; rules; appointment of hearings officers
- [342H-4](#) Permits; procedures for
- [342H-4.5](#) Repealed
- [342H-5](#) Variances
- [342H-6](#) Inspection of premises
- [342H-7](#) Enforcement
- [342H-8](#) Emergency powers; procedures
- [342H-9](#) Penalties
- [342H-10](#) Administrative penalties
- [342H-10.5](#) Disposition of collected fines and penalties
- [342H-11](#) Injunctive and other relief
- [342H-12](#) Appeal
- [342H-13](#) Fees
- [342H-14](#) Public records; confidential information; penalties
- [342H-15](#) Nonliability of department personnel
- [342H-16](#) Other action not barred
- [342H-17](#) Enforcement by state and county authorities
- [342H-18](#) Other powers of department not affected
- [342H-19](#) Effect of laws, ordinances, and rules
- [342H-20](#) Priority in courts
- [342H-21](#) Unauthorized removal of recyclable materials

#### Part II. Solid Waste Control

- [342H-30](#) Prohibition; civil
- [342H-31](#) Rules; specific
- [342H-32](#) Plans and reports
- [342H-33](#) Appointment of masters
- [342H-34](#) Consultation and advice
- [342H-35](#) Research, educational, and training programs
- [342H-36](#) Recycling for agricultural purposes; encouraged
- [342H-36.5](#) Leaf blower debris
- [342H-37](#) Felony disposal of solid waste

[342H-38](#) Felony disposal of solid waste; deferred prosecution agreement

[342H-39](#) Petty misdemeanor disposal of solid waste

### Part III. Plastic Container Coding

[342H-41](#) Definitions

[342H-42](#) Prohibition

### Part IV. Municipal Solid Waste Landfill Criteria

[342H-51](#) Definitions

[342H-52](#) Prohibitions; buffer zones

[342H-53](#) Applicability and requirements

[342H-54](#) Public participation

[342H-55](#) Rules; specific

[342H-56](#) Other powers

[342H-57](#) Intervention

## Cross References

Construction projects; recycled glass requirements, see §103D-407.

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Glass container recovery, see §§342G-81 to 342G-87.

Litter control, see chapter 339.

Special wastes recycling, see chapter 342I.

## Law Journals and Reviews

Liability Insurance Coverage for Pollution Claims. 12 UH L. Rev. 83 (1990).

Municipal Waste Combustion: A Wasted Investment? 12 UH L. Rev. 153 (1990).

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**§342H-52 Prohibitions; buffer zones.** (a) No person, including any federal agency, the State, or any county, shall construct, operate, modify, expand, or close a municipal solid waste landfill unit, or any component of a municipal solid waste landfill unit, without first obtaining a permit from the director. All permits for municipal solid waste landfill units shall be subject to any terms and conditions that the director determines are necessary to protect human health or the environment.

(b) No person, including the State or any county, shall construct, modify, or expand a waste or disposal facility including a municipal solid waste landfill unit, any component of a municipal solid waste landfill unit, a construction and demolition landfill unit, or any component of a construction and demolition landfill unit without first establishing a buffer zone of no less than one-half mile around the waste or disposal facility. This subsection shall not apply to the continued operation of an existing waste or disposal facility that is properly permitted; provided that continued operation does not require physical expansion, vertical or horizontal, of the facility requiring additional permitting review and a permit modification.

For the purposes of this subsection:

"Buffer zone" means the distance between the edge of waste or waste activity and the nearest residential, school, or hospital property line.

"Waste or disposal facility" excludes individual, state certified, non-industrial redemption centers. [L 1992, c 245, pt of §1; am L 2020, c 73, §2; am L 2022, c 9, §2]

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**Act 112, SLH 2008, Relating to Federal Fisheries Regulations**

HRS § 187A-5.5 Consistency of state and federal fisheries regulations

## ACT 112

H.B. NO. 3174

A Bill for an Act Relating to Federal Fisheries Regulations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§187A- Consistency of state and federal fisheries regulations. (a)**

The department shall adopt administrative rules pursuant to chapter 91 for fisheries located in both state and federal waters, that are equivalent to and consistent with federal fisheries regulations for the same waters, to create uniform, complementary, and comprehensive management measures to improve efficiencies in management and effectiveness of enforcement, under the following conditions:

(1) A federal agency with responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands has:

- (A) Declared that a fishery is in a state of overfishing, is overfished, or is in some other state of unsustainability; and
- (B) Promulgated or amended federal fisheries regulations to correct the decline in the fishery;

and

(2) The fishery occurs in both state and federal marine waters.

(b) The board shall annually establish a fishing season, a total fishing quota, or individual fishing quotas, or adopt rules pursuant to chapter 91 relating to bag, size, and gear limits, consistent with federal fisheries regulations that are adopted or declared by the federal government to prevent overfishing and with similar state rules adopted under subsection (a).

(c) If the federal fisheries agency declares a fishery to be sustainable and amends or repeals its regulations accordingly, the department shall amend or repeal any rules for that fishery adopted under subsection (a).

(d) Nothing contained in this section shall be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices authorized by law or permitted by the department pursuant to article XII, section 7, of the Hawaii Constitution.

(e) This section shall not apply to the Papahānaumokuākea Marine National Monument.

(f) As used in this section, unless the context clearly indicates otherwise:

“Declared” or “declares” means a public announcement made by a federal agency with the responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94-265), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act



of 2006 (P.L. 109-479), that a fishery in state marine waters is in a state of overfishing, overfished, or in some other state of unsustainability.

“Federal fisheries regulations” means regulations relating to the management of marine fisheries adopted by federal agencies such as the National Marine Fisheries Service or the United States Department of Commerce, and codified in the Code of Federal Regulations.

“Federal marine waters” means the Exclusive Economic Zone established by Presidential Proclamation 5030, 3 Code of Federal Regulations 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from a baseline starting at the seaward boundary of state territorial seas extending seaward two hundred nautical miles.

“Fishery” or “fisheries” means one or more stocks of marine resources other than marine mammals and birds that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

“Overfishing” or “overfished” means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved May 27, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## CHAPTER 187A AQUATIC RESOURCES

### Part I. General Provisions

#### Section

- [187A-1](#) Definitions
- [187A-1.5](#) State marine waters
- [187A-1.6](#) Applicability of statutes and rules
- [187A-2](#) Powers and duties of department
- [187A-3](#) Repealed
- [187A-3.5](#) Aquaculturist license and license to sell prohibited aquatic life
- [187A-4](#) Administrator
- [187A-5](#) Rules
- [187A-5.5](#) Consistency of state and federal fisheries regulations
- [187A-6](#) Special activity permits
- [187A-6.5](#) Release and confiscation of harmful aquatic life
- [187A-7](#) Expenditures
- [187A-8](#) Cooperation with other governmental authorities
- [187A-9](#) Federal aid in sport fish restoration
- [187A-9.5](#) Sport fish special fund
- [187A-10](#) Agents to sell licenses
- [187A-11](#) Repealed
- [187A-12](#) University of Hawaii may use land, etc.
- [187A-12.4](#) Misrepresentation or false statement in receipts and reports
- [187A-12.5](#) General administrative penalties
- [187A-13](#) General penalty; community service
- [187A-14](#) Informer's fee
- [187A-15](#) Rights of inspection of catch

### Part II. Fishing Rights

- [187A-21](#) Public fishing grounds
- [187A-22](#) Use of adjoining lands
- [187A-23](#) Konohiki rights

### Part III. Alien Aquatic Organisms

- [187A-31](#) Definitions
- [187A-32](#) Alien aquatic organisms; lead agency; rules

Part IV. Aquatic Mitigation Banking and Aquatic  
In-Lieu Fee Mitigation

[187A-41](#) Aquatic mitigation banking and aquatic in-lieu fee  
mitigation

[187A-42](#) Rules

Part V. Ocean Stewardship

[187A-51](#) Ocean stewardship special fund

[187A-52](#) Ocean stewardship user fee

### **Cross References**

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

### **Law Journals and Reviews**

Protecting Hawai`i's Fisheries: Creating an  
Effective Regulatory Scheme to Sustain Hawai`i's Fish  
Stocks. 29 UH L. Rev. 243 (2006).

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**[§187A-5.5] Consistency of state and federal fisheries regulations.** (a) The department shall adopt administrative rules pursuant to chapter 91 for fisheries located in both state and federal waters, that are equivalent to and consistent with federal fisheries regulations for the same waters, to create uniform, complementary, and comprehensive management measures to improve efficiencies in management and effectiveness of enforcement, under the following conditions:

(1) A federal agency with responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands has:

(A) Declared that a fishery is in a state of overfishing, is overfished, or is in some other state of unsustainability; and

(B) Promulgated or amended federal fisheries regulations to correct the decline in the fishery; and

(2) The fishery occurs in both state and federal marine waters.

(b) The board shall annually establish a fishing season, a total fishing quota, or individual fishing quotas, or adopt rules pursuant to chapter 91 relating to bag, size, and gear limits, consistent with federal fisheries regulations that are adopted or declared by the federal government to prevent overfishing and with similar state rules adopted under subsection (a).

(c) If the federal fisheries agency declares a fishery to be sustainable and amends or repeals its regulations accordingly, the department shall amend or repeal any rules for that fishery adopted under subsection (a).

(d) Nothing contained in this section shall be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices authorized by law or permitted by the department pursuant to article XII, section 7, of the Hawaii constitution.

(e) This section shall not apply to the Papahānaumokuākea Marine National Monument.

(f) As used in this section, unless the context clearly indicates otherwise:

"Declared" or "declares" means a public announcement made by a federal agency with the responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94-265), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006

(P.L. 109-479), that a fishery in state marine waters is in a state of overfishing, overfished, or in some other state of unsustainability.

"Federal fisheries regulations" means regulations relating to the management of marine fisheries adopted by federal agencies such as the National Marine Fisheries Service or the United States Department of Commerce, and codified in the Code of Federal Regulations.

"Federal marine waters" means the Exclusive Economic Zone established by Presidential Proclamation 5030, 3 Code of Federal Regulations 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from a baseline starting at the seaward boundary of state territorial seas extending seaward two hundred nautical miles.

"Fishery" or "fisheries" means one or more stocks of marine resources other than marine mammals and birds that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

"Overfishing" or "overfished" means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis. [L 2008, c 112, §1]

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**Act 157, SLH 2022, Relating to Underground Storage Tanks**

HRS § 342L-4.2 Large capacity underground tank systems; prohibited

## ACT 157

S.B. NO. 2600

A Bill for an Act Relating to Underground Storage Tanks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 342L, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**“§342L- Large capacity underground storage tank systems; prohibited.** (a) Beginning July 1, 2022, the department shall not issue a permit for a new large capacity underground storage tank system mauka of the underground injection control line.

(b) Beginning July 1, 2022, no person shall operate a large capacity underground storage tank system mauka of the underground injection control line, and no permit for a large capacity underground storage tank system mauka of the underground injection control line shall be renewed; provided that this subsection shall not apply to operations necessary to address maintenance required to safely support defueling, environmental requirements, any operations directly related to defueling, or requirements under section 342L-9.

(c) As used in this section:

“Large capacity underground storage tank system” means an underground storage tank system with any single tank with a capacity greater than fifty thousand gallons or with a total tank capacity greater than one hundred thousand gallons.

“Mauka” means toward the mountains or the encircled protected aquifer.

“Underground injection control line” means the underground injection control line represented by a dashed line on the department of health underground injection control program maps, made effective July 6, 1984, pursuant to section 340E-2 and identified as follows:

- (1) For the island of Hawaii, quadrangles H-1 to H-74;
- (2) For the island of Kauai, quadrangles K-1 to K-11;
- (3) For the island of Lanai, quadrangles L-North and L-South;
- (4) For the island of Maui, quadrangles M-1 to M-17;
- (5) For the island of Molokai, quadrangles M-East and M-West; and

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(6) For the island of Oahu, quadrangles O-1 to O-15.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 27, 2022.)

**Note**

1. Edited pursuant to HRS §23G-16.5.



## CHAPTER 342L UNDERGROUND STORAGE TANKS

### Part I. Definitions and General Provisions

#### Section

- [342L-1](#) Definitions
- [342L-2](#) Administration
- [342L-3](#) Powers; rulemaking; appointment of hearings officers
- [342L-4](#) Permits; procedures for
- [342L-4.2](#) Large capacity underground storage tank systems; prohibited
- [342L-4.5](#) Permits near shoreline prohibited; exception
- [342L-5](#) Variances allowed
- [342L-6](#) Variances; procedures for
- [342L-7](#) Authority to obtain information and data, inspect, and require and conduct activities; penalties for disclosure
- [342L-7.5](#) Record maintenance
- [342L-8](#) Enforcement
- [342L-9](#) Emergency powers; procedures
- [342L-10](#) Penalties
- [342L-11](#) Administrative penalties
- [342L-11.5](#) Repealed
- [342L-12](#) Injunctive and other relief
- [342L-12.5](#) Intervention
- [342L-13](#) Appeal
- [342L-14](#) Fees
- [342L-15](#) Public records; confidential information
- [342L-16](#) Nonliability of department personnel
- [342L-17](#) Other action not barred
- [342L-18](#) Enforcement by state and county authorities
- [342L-19](#) Other powers of department not affected
- [342L-20](#) Effect of laws, ordinances, and rules
- [342L-21](#) Priority in courts
- [342L-22](#) Repealed
- [342L-23](#) Directory of underground storage tank service providers

### Part II. Underground Storage Tank Regulation

- [342L-30](#) Notification requirements
- [342L-31](#) Permit requirements and transfer of permit

- [342L-32](#) Standards for tanks and tank systems
- [342L-32.5](#) Delivery, deposit, and acceptance prohibition
- [342L-33](#) Release detection
- [342L-34](#) Reporting of releases
- [342L-35](#) Response to suspected or confirmed releases
- [342L-36](#) Financial responsibility
- [342L-36.5](#) Repealed
- [342L-37](#) Underground storage tank and tank system change in service and closure requirements

### Part III. Department Response Program for Petroleum Releases

- [342L-50](#) Definitions
- [342L-51](#) Leaking underground storage tank fund
- [342L-52](#) Response to suspected or confirmed releases
- [342L-53](#) Cost recovery

### Part IV. Fuel Tank Advisory Committee

- [342L-61](#) Fuel tank advisory committee; established; composition
- [342L-62](#) Duties

## Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

## Law Journals and Reviews

Liability Insurance Coverage for Pollution Claims. 12 UH L. Rev. 83 (1990).

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**[§342L-4.2] Large capacity underground storage tank systems; prohibited.** (a) Beginning July 1, 2022, the department shall not issue a permit for a new large capacity underground storage tank system mauka of the underground injection control line.

(b) Beginning July 1, 2022, no person shall operate a large capacity underground storage tank system mauka of the underground injection control line, and no permit for a large capacity underground storage tank system mauka of the underground injection control line shall be renewed; provided that this subsection shall not apply to operations necessary to address maintenance required to safely support defueling, environmental requirements, any operations directly related to defueling, or requirements under section 342L-9.

(c) As used in this section:

"Large capacity underground storage tank system" means an underground storage tank system with any single tank with a capacity greater than fifty thousand gallons or with a total tank capacity greater than one hundred thousand gallons.

"Mauka" means toward the mountains or the encircled protected aquifer.

"Underground injection control line" means the underground injection control line represented by a dashed line on the department of health underground injection control program maps, made effective July 6, 1984, pursuant to section 340E-2 and identified as follows:

- (1) For the island of Hawaii, quadrangles H-1 to H-74;
- (2) For the island of Kauai, quadrangles K-1 to K-11;
- (3) For the island of Lanai, quadrangles L-North and L-South;
- (4) For the island of Maui, quadrangles M-1 to M-17;
- (5) For the island of Molokai, quadrangles M-East and M-West; and
- (6) For the island of Oahu, quadrangles O-1 to O-15. [L 2022, c 157,

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**Act 179, SLH 2016, Relating to Underground Storage Tanks**

HRS § 342L-4.5 Permits near shoreline prohibited; exception

## ACT 179

H.B. NO. 2626

A Bill for an Act Relating to Underground Storage Tanks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that climate change is real and that sea level rise poses a threat to our quality of life. Preparation for sea level rise now will protect our natural resources and save money in the long term. Inundation of underground fuel storage tanks poses risks to our aquifers, coastal water quality, and marine ecosystems.

The purpose of this Act is to:

- (1) Prohibit the issuance of permits for new underground fuel storage tanks within one hundred yards of the shoreline;
- (2) Allow for permits for existing underground fuel storage tanks for purposes of repair or replacement of the existing underground fuel storage tank; and
- (3) Beginning January 1, 2045, prohibit operation of and renewal of a permit for an underground fuel storage tank within one hundred yards of the shoreline.

SECTION 2. Chapter 342L, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§342L- Permits near shoreline prohibited; exception.** (a) The department shall not issue a permit for a new underground fuel storage tank within one hundred yards of the shoreline; provided that a permit may be issued by the department for purposes of repairing or replacing an existing underground fuel storage tank.

(b) Except as otherwise provided in subsection (c), the holder of a permit for an existing underground fuel storage tank within one hundred yards of the shoreline may renew the permit.

(c) Beginning January 1, 2045, no person shall operate an underground fuel storage tank within one hundred yards of the shoreline, and no permit for an underground fuel storage tank within one hundred yards of the shoreline shall be renewed.”

SECTION 3. Section 342L-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

**““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.”**

**SECTION 4.** New statutory material is underscored.<sup>1</sup>

**SECTION 5.** This Act shall take effect on July 1, 2016.

(Approved July 1, 2016.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**[§342L-4.5] Permits near shoreline prohibited; exception.** (a)

The department shall not issue a permit for a new underground fuel storage tank within one hundred yards of the shoreline; provided that a permit may be issued by the department for purposes of repairing or replacing an existing underground fuel storage tank.

(b) Except as otherwise provided in subsection (c), the holder of a permit for an existing underground fuel storage tank within one hundred yards of the shoreline may renew the permit.

(c) Beginning January 1, 2045, no person shall operate an underground fuel storage tank within one hundred yards of the shoreline, and no permit for an underground fuel storage tank within one hundred yards of the shoreline shall be renewed. [L 2016, c 179, §2]

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**Act 212, SLH 2022, Relating to Historic Preservation**

HRS § 6E-11 Civil and administrative violations

HRS § 6E-11.5 Civil penalties

HRS § 6E-12 Reproductions, forgeries and illegal sales



ACT 212

S.B. NO. 1411

A Bill for an Act Relating to Historic Preservation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 6E-11, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Any person who violates this section shall be fined not more than ~~[\$10,000]~~ \$20,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the environmental court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Any landowner or developer responsible for any project where violations are found to have occurred shall execute any mitigation and preservation measures ordered by the department and shall be jointly and severally liable for any costs of mitigation and preservation. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.”

SECTION 2. Section 6E-11.5, Hawaii Revised Statutes, is amended to read as follows:

“**§6E-11.5 Civil penalties.** Except as provided in section 6E-11, any person who violates this chapter, or any rule adopted pursuant to this chapter shall be fined not less than \$500 nor more than ~~[\$10,000]~~ \$20,000 for each separate violation. Each day of each violation constitutes a separate violation.”

SECTION 3. Section 6E-12, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any person violating this section shall be fined [~~no~~] not more than [~~\$10,000.~~] \$25,000. Each historic object or part of a prehistoric or historic human skeleton or associated burial good offered for sale or trade or removed from the jurisdiction in violation of this section shall constitute a distinct and separate offense for which the offender may be punished.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.  
(Approved June 27, 2022.)

## CHAPTER 6E

### HISTORIC PRESERVATION

#### Part I. Historic Preservation Program

##### Section

- [6E-1](#) Declaration of intent
- [6E-2](#) Definitions
- [6E-3](#) Historic preservation program
- [6E-3.5](#) Consultation
- [6E-4](#) Administration
- [6E-5](#) State historic preservation officer
- [6E-5.5](#) The Hawaii historic places review board; creation; powers; appointments; composition
- [6E-6](#) Depositories for certain specimens and objects
- [6E-7](#) State title to historic property
- [6E-8](#) Review of effect of proposed state projects
- [6E-9](#) Investigation, recording, preservation, and salvage; appropriations
- [6E-10](#) Privately owned historic property
- [6E-10.5](#) Enforcement
- [6E-11](#) Civil and administrative violations
- [6E-11.5](#) Civil penalties
- [6E-11.6](#) Administrative penalties
- [6E-12](#) Reproductions, forgeries, and illegal sales
- [6E-13](#) Injunctive relief
- [6E-14](#) Preservation activities by political subdivisions
- [6E-15](#) Regulations, special conditions or restrictions
- [6E-16](#) Hawaii historic preservation special fund
- [6E-17](#) Archaeological data survey database
- [6E-18](#) President Barack Obama historical markers

#### Part II. Monuments and Memorials

- [6E-31](#) Monuments; reservation of land; relinquishment of private claims
- [6E-32](#) Diamond Head State Monument
- [6E-32.5](#) Mount Olomana state monument
- [6E-33](#) Repealed
- [6E-34](#) Capitol site
- [6E-34.5](#) Repealed
- [6E-35](#) Iolani Palace
- [6E-36](#) Sand Island

- [6E-37](#) National statuary hall; Father Damien
- [6E-38](#) National statuary hall; King Kamehameha I
- [6E-38.5](#) Kohala Historical Sites State Monument
- [6E-39](#) Jurisdiction over World War II memorial
- [6E-40](#) Bernice Pauahi Bishop Museum
- [6E-41](#) Cemeteries; removal or redesignation
- [6E-42](#) Review of proposed projects
- [6E-42.2](#) Excluded activities for privately-owned single-family detached dwelling units and townhouses
- [6E-43](#) Prehistoric and historic burial sites
- [6E-43.5](#) Island burial councils; creation; appointment; composition; duties
- [6E-43.6](#) Inadvertent discovery of burial sites
- [6E-44](#) Veterans memorial commission
- [6E-45](#) Korean and Vietnam memorial
- [6E-46](#) Hawaii Sports Hall of Fame
- [6E-47](#) Pearl Harbor historic trail

#### Part III. Pacific War Memorial System

- [6E-51](#) Department of land and natural resources; powers
- [6E-52](#) Transfer of lands

#### Part IV. Miscellaneous Provisions

- [6E-61](#) Biological survey; designation

#### Part V. Criminal Offenses

- [6E-71](#) Taking, appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact; penalty
- [6E-72](#) Taking, appropriation, excavation, injury, destruction, or alteration of a burial site; penalty
- [6E-73](#) Failure to stop work upon discovery of a burial site; penalty
- [6E-74](#) Criminal penalties not in lieu of civil or administrative penalties
- [6E-75](#) Part not applicable to family burial plots

#### Part VI. South Kona Wilderness Area

- [6E-81](#) South Kona wilderness area; establishment
- [6E-82](#) Lands included
- [6E-83](#) Government-owned land; construction prohibited

## Cross References

Allowance of indigenous Hawaiian architecture by county ordinances, see §46-1.55.

Kaho`olawe island reserve, see chapter 6K.

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

`Ulu`ulu: The Henry Ku`ualoha Giugni moving image archive of Hawai`i, see §304A-1864.

## Law Journals and Reviews

Ensuring Our Future by Protecting Our Past: An Indigenous Reconciliation Approach to Improving Native Hawaiian Burial Protection. 33 UH L. Rev. 321 (2010).

Ke Ala Pono--The Path of Justice: The Moon Court's Native Hawaiian Rights Decisions. 33 UH L. Rev. 447 (2011).

Unwinding Non-Native Control Over Native America's Past: A Statistical Analysis of the Decisions to Return Native American Human Remains and Funerary Objects under the Native American Graves Protection and Repatriation Act, 1992-2013. 38 UH L. Rev. 337 (2016).

## Case Notes

As the protections provided by this chapter to human skeletal remains and burial sites do not turn on religious distinctions, plaintiff's interest in protecting family members' unmarked burials and native Hawaiian burials were not extinguished by the burials being "Christian burials"; plaintiff thus had standing on plaintiff's claims under this chapter. 128 H. 455 (App.), 290 P.3d 525 (2012).

Where plaintiff asserted that: (1) plaintiff had family members buried on the church grounds; (2) plaintiff was a native Hawaiian and a recognized cultural descendant of the iwi found on the church grounds; (3) plaintiff had a traditional and customary practice of caring for iwi; (4) plaintiff was concerned that family members may be buried in unmarked

burials on the church grounds; and (5) the disturbance of unmarked burials of family members or other cultural ancestors would cause plaintiff injury and harm, plaintiff had standing to raise claims under this chapter. 128 H. 455 (App.), 290 P.3d 525 (2012).

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**§6E-11 Civil and administrative violations.** (a) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner's written permission being first obtained. It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(b) It shall be a civil and administrative violation for any person to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site, or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(c) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

(d) It shall be a civil and administrative violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in section 6E-2, except as permitted by the department.

(f) Any person who violates this section shall be fined not more than \$20,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the environmental court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished.

Any landowner or developer responsible for any project where violations are found to have occurred shall execute any mitigation and preservation measures ordered by the department and shall be jointly and severally liable for any costs of mitigation and preservation. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

(g) Any person who knowingly violates this chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.

(h) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.

(i) The civil and administrative penalties imposed pursuant to this chapter shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law. [L 1976, c 104, pt of §2; gen ch 1985; am L 1990, c 306, §8; am L 1992, c 113, §3; am L 1996, c 97, §8; am L 2003, c 104, §3; am L 2005, c 128, §3; am L 2006, c 38, §1 and c 45, §2; am L 2007, c 9, §1; am L 2014, c 218, §8; am L 2022, c 212, §1]

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**§6E-11.5 Civil penalties.** Except as provided in section 6E-11, any person who violates this chapter, or any rule adopted pursuant to this chapter shall be fined not less than \$500 nor more than \$20,000 for each separate violation. Each day of each violation constitutes a separate violation. [L 2003, c 104, pt of §2; am L 2005, c 128, §4; am L 2022, c 212, §2]

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**§6E-12 Reproductions, forgeries, and illegal sales.** (a) It shall be unlawful to reproduce, retouch, rework, or forge any historic object and to represent it or offer it for trade or sale as an original and genuine object. It shall be unlawful for any person to offer for sale or exchange any historic object with the knowledge that it has been collected or excavated in violation of any of the terms of this chapter.

(b) It shall be unlawful for any person to:

- (1) Offer for sale or exchange any exhumed prehistoric or historic human skeletal remains or associated burial goods; or
- (2) Remove those goods or remains, except those remains fabricated into artifacts prehistorically, from the jurisdiction of the State without obtaining a permit from the department.

(c) It shall be unlawful for any person to remove aviation artifacts derived from state lands or agencies from the jurisdiction of the State without obtaining a permit from the department.

(d) Any person violating this section shall be fined not more than \$25,000. Each historic object or part of a prehistoric or historic human skeleton or associated burial good offered for sale or trade or removed from the jurisdiction in violation of this section shall constitute a distinct and separate offense for which the offender may be punished. [L 1976, c 104, pt of §2; am L 1990, c 306, §9; am L 1996, c 97, §9; am L 2022, c 212, §3]

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**Act 213, SLH 2022, Relating to Abandoned Wells**

HRS § 174C-81 Definition of “Abandoned wells”

HRS § 174C-87 Sealing of abandoned wells

## ACT 213

S.B. NO. 2752

A Bill for an Act Relating to Abandoned Wells.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that wells in a state of disuse or disrepair can become conduits for contaminants to be introduced into ground water. Abandoned wells can also become receptacles for the disposal of waste, potentially resulting in additional contamination and associated risk to public health and the environment.

The legislature further finds that the commission on water resource management has developed minimum standards relating to water wells, including their sealing and abandonment, in order to protect the quality and quantity of the State's ground water resources.

The purpose of this Act is to require an owner of an abandoned well to repair or seal the well at the owner's expense.

SECTION 2. Section 174C-81, Hawaii Revised Statutes, is amended by amending the definition of "abandoned well" to read as follows:

““Abandoned well” means any well ~~that~~:

- (1) The purpose or use of which has been permanently discontinued~~[- Any well shall be deemed abandoned which is];~~
- (2) That has served its purpose;
- (3) That is not properly maintained;
- (4) The physical condition of which is causing a waste of ground water or is impairing or threatens to impair the quality of the ground water resources; or
- (5) That is in such a state of disrepair that its continued use [for the purpose of obtaining ground water] is impractical[-] or poses a hazard to public health or safety.”

SECTION 3. Section 174C-87, Hawaii Revised Statutes, is amended to read as follows:

**“§174C-87 [Abandonment] Sealing of abandoned wells.** (a) When a well is abandoned, the owner shall ~~fill and~~ seal the abandoned well in a manner approved by the commission. Before ~~[abandonment,]~~ sealing, the owner shall file with the commission ~~[a report showing the owner’s name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a description of the work to be performed to effect the abandonment;]~~ an application for a well sealing permit signed by a driller licensed to do the work and ~~[such]~~ other information ~~[as]~~ required by the commission ~~[may require]~~.

(b) The owner of an abandoned well shall repair or seal the well at the owner’s expense, as provided by the well construction and pump installation standards.

(c) Notwithstanding any other law to the contrary, if the owner of real property that includes an abandoned well transfers ownership of the real property, the owner shall notify the commission on water resource management of that transfer upon opening of escrow; provided that the presence or existence of the abandoned well is:

- (1) Within the knowledge of the owner; or
- (2) Visible from an accessible area.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 27, 2022.)

## CHAPTER 174C STATE WATER CODE

### Part I. Administrative Structure

#### Section

- [174C-1](#) Short title
- [174C-2](#) Declaration of policy
- [174C-3](#) Definitions
- [174C-4](#) Scope
- [174C-5](#) General powers and duties
- [174C-5.5](#) Water resource management fund
- [174C-6](#) Deputy to the chairperson of the commission on water resource management
- [174C-7](#) Commission on water resource management
- [174C-8](#) Adoption of rules concerning water resources by the commission
- [174C-9](#) Proceedings before the commission concerning water resources
- [174C-10](#) Dispute resolution
- [174C-11](#) Hearings officers
- [174C-12](#) Judicial review of rules and orders of the commission concerning the water code
- [174C-12.5](#) Contested cases; appeals
- [174C-13](#) Citizen complaints
- [174C-14](#) Acquisition of real property
- [174C-15](#) Penalties and common law remedies
- [174C-15.5](#) Administrative violation system
- [174C-16](#) Severability

### Part II. Reports of Water Use

- [174C-26](#) Filing of declaration
- [174C-27](#) Issuance of certificate

### Part III. Hawaii Water Plan

- [174C-31](#) Hawaii water plan
- [174C-32](#) Coordination

### Part IV. Regulation of Water Use

- [174C-41](#) Designation of water management area
- [174C-42](#) Notice; public hearing required
- [174C-43](#) Investigations required

- [174C-44](#) Ground water criteria for designation
- [174C-45](#) Surface water criteria for designation
- [174C-46](#) Findings of fact; decision of commission
- [174C-47](#) Modifying and rescinding designated areas
- [174C-48](#) Permits required
- [174C-49](#) Conditions for a permit
- [174C-50](#) Existing uses
- [174C-51](#) Application for a permit
- [174C-51.5](#) Dual line water supply systems; installation in new industrial and commercial developments located in designated water management areas
- [174C-52](#) Notice
- [174C-53](#) Permit issuance
- [174C-54](#) Competing applications
- [174C-55](#) Duration of permits
- [174C-56](#) Review of permits
- [174C-57](#) Modification of permit terms
- [174C-58](#) Revocation of permits
- [174C-59](#) Transfer of permit
- [174C-60](#) Contested cases
- [174C-61](#) Fees
- [174C-62](#) Declaration of water shortage
- [174C-63](#) Appurtenant rights

#### Part V. Water Quality

- [174C-66](#) Jurisdiction over water quality
- [174C-67](#) Exchange of information
- [174C-68](#) Water quality plan

#### Part VI. Instream Uses of Water

- [174C-71](#) Protection of instream uses

#### Part VII. Wells

- [174C-81](#) Definitions
- [174C-82](#) Powers and duties of the commission
- [174C-83](#) Registration of all existing wells
- [174C-84](#) Permits for well construction and pump installation
- [174C-85](#) Well completion report
- [174C-86](#) Well construction and pump installation standards
- [174C-87](#) Sealing of abandoned wells

#### Part VIII. Stream Diversion Works

- [174C-91](#) Definition
- [174C-92](#) Registration of existing stream diversion works
- [174C-93](#) Permits for construction or alteration
- [174C-94](#) Completion report
- [174C-95](#) Abandonment

## Part IX. Native Hawaiian Water Rights

- [174C-101](#) Native Hawaiian water rights

### Note

Standardized water audits of public water systems; reports. L 2016, c 169.

The acquisition of the Waiahole water system shall not be construed to affect the powers and authority of the commission on water resource management or its powers to modify any water allocations. L 1998, c 111, §15.

### Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Irrigation and water utilization projects, see chapter 168.

Irrigation water development, see chapter 167.

### Law Journals and Reviews

Testing the Current: The Water Code and the Regulation of Hawaii's Water Resources. 10 UH L. Rev. 205 (1988).

Private Hopes and Public Values in the "Reasonable Beneficial Use" of Hawaii's Water: Is Balance Possible? 18 UH L. Rev. 1 (1996).

Cultures In Conflict In Hawai'i: The Law and Politics of Native Hawaiian Water Rights. 18 UH L. Rev. 71 (1996).

Proceedings of the 2001 Symposium on Managing Hawai'i's Public Trust Doctrine. 24 UH L. Rev. 21 (2001).

Water Regulation, Land Use and the Environment. 30 UH L. Rev. 49 (2007).



Where Justice Flows Like Water: The Moon Court's Role in Illuminating Hawai'i Water Law. 33 UH L. Rev. 537 (2011).

Nā Mo`o o Ko`olau: The Water Guardians of Ko`olau Weaving and Wielding Collective Memory in the War for East Maui Water. 41 UH L. Rev. 189 (2018).

A Voice for the Waters of East Maui. 43 UH L. Rev. 166 (2020).

### Case Notes

Although the public trust doctrine and the state water code share similar core principles, the code does not supplant the protections of the public trust doctrine. 94 H. 97, 9 P.3d 409 (2000).

Despite evidence that permit applicant violated chapter 340E, neither the water code nor the public trust precluded the commission on water resource management from allocating water to applicant to supply water to domestic end users from a delivery system that may not comply with chapter 340E; as this jurisdiction separately regulates water allocation and drinking water standards, and there was no discernable legislative intent to make water use permit applications subject to compliance with chapter 340E, violations of chapter 340E were not germane to a review of the propriety of water allocation under the water code and the public trust. 116 H. 481, 174 P.3d 320 (2007).

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## PART VII. WELLS

**§174C-81 Definitions.** As used in this part, unless the context otherwise requires, the terms:

"Abandoned well" means any well:

- (1) The purpose or use of which has been permanently discontinued;
- (2) That has served its purpose;
- (3) That is not properly maintained;
- (4) The physical condition of which is causing a waste of ground water or is impairing or threatens to impair the quality of the ground water resources; or
- (5) That is in such a state of disrepair that its continued use is impractical or poses a hazard to public health or safety.

"Installation of pumps and pumping equipment" means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrance to the well, and establishing seals and repairs to existing installations.

"Pump installation contractor" means any person, firm, or corporation which is in the business of installing or repairing pumps and pumping equipment.

"Pumps and pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water. It includes seals, tanks, fittings, and controls.

"Repairs" means any change, replacement, or other alteration of any well, pump, or pumping equipment which requires a breaking or opening of the well seal.

"Well" shall be as defined in section 174C-3.

"Well construction" means the producing of any well, including the construction, alteration, or repair thereof, but excluding the installation of pumps and pumping equipment.

"Well driller" means any person, firm, or corporation which constructs, alters, or repairs wells.

"Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the other terminal. [L 1987, c 45, pt of §2; am L 2022, c 213, §2]

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**§174C-87 Sealing of abandoned wells.** (a) When a well is abandoned, the owner shall seal the abandoned well in a manner approved by the commission. Before sealing, the owner shall file with the commission an application for a well sealing permit signed by a driller licensed to do the work and other information required by the commission.

(b) The owner of an abandoned well shall repair or seal the well at the owner's expense, as provided by the well construction and pump installation standards.

(c) Notwithstanding any other law to the contrary, if the owner of real property that includes an abandoned well transfers ownership of the real property, the owner shall notify the commission on water resource management of that transfer upon opening of escrow; provided that the presence or existence of the abandoned well is:

- (1) Within the knowledge of the owner; or
- (2) Visible from an accessible area. [L 1987, c 45, pt of §2; am L 1999, c 197, §12; am L 2022, c 213, §3]

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**Marine Fisheries Management Areas, Kīpahulu, Maui**

HAR Chapter 13-60.11 Kīpahulu Community-Based Subsistence Fishing Area, Maui

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.11

KĪPAHULU COMMUNITY-BASED SUBSISTENCE FISHING AREA,  
MAUI

§13-60.11-1	Purpose
§13-60.11-2	Definitions
§13-60.11-3	Boundaries
§13-60.11-4	Permitted and prohibited activities
§13-60.11-5	Transit through the Kīpahulu Community- Based Subsistence Fishing Area with restricted gear and species
§13-60.11-6	Penalty
§13-60.11-7	Asset Forfeiture
§13-60.11-8	Severability

**§13-60.11-1 Purpose.** The purposes for this chapter regarding the Kīpahulu Community-Based Subsistence Fishing Area are to:

- (1) Sustainably support the subsistence needs of the Kīpahulu Moku community on the island of

§13-60.11-1

- Maui through culturally-rooted, community-based management;
- (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of marine life;
  - (3) Recognize and protect customary and traditional native Hawaiian fishing practices that are exercised for subsistence, cultural, and religious purposes in the area;
  - (4) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users;
  - (5) Establish the 'Opihi Rest Area to ensure stock health and to allow replenishment of this important food resource; and
  - (6) Establish the Kukui Bay Sanctuary for the preservation and protection of critical nursery habitat for numerous marine species, including species traditionally relied upon for subsistence. [Eff 3/25/24] (Auth: HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§188-22.6, 188-53, 190-3, Haw. Const. art. XI, §6)

**§13-60.11-2 Definitions.** As used in this chapter, unless otherwise provided:

"Akule" means any fish known as *Selar crumenophthalmus* or other recognized synonyms. Akule are also known as pā`ā`ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"Area" means the Kīpahulu Community-Based Subsistence Fishing Area, Maui (Kīpahulu CBSFA) as encompassed within the boundaries described in section 13-60.11-3(a).

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean,

arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof.

"Bag net" means a type of fishing net made into the shape of a pocket or pouch with an open end held open in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down on the ocean bottom. The bag net is usually made of heavy gauge line to make the net visible and made of small mesh to prevent the fish from passing through the mesh.

"Community" means a ho'a'aina relationship to place as demonstrably indicated through genealogy, practice, or residency.

"Department" means the Department of Land and Natural Resources.

"Diving" means any activity conducted in the water involving the use of an underwater breathing apparatus or a mask, goggles, or any other device that assists a person to see underwater while the person's face is submerged. Diving includes both extractive and non-extractive activities, such as SCUBA diving, free diving, and snorkeling.

"Double hook" means a hook having two points on a common shank.

"Finfish" means any of the various species of marine life that uses fins to swim, not including invertebrates, marine mammals, or sea turtles.

"Fish" means any species of marine life with a backbone, gills, and with limbs that are fins, if any.

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, or harvest aquatic life, by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be caught, taken, or harvested, shall be deemed to be fishing.



"Fishing gear" means any net, spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life.

"Fishing lure" means any device, including a fishing fly, which is designed to attract fish and which incorporates a fishing hook.

"Gill net" means a panel or curtain of net made of various materials, that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater, with mesh openings generally large enough to permit the heads of fish to pass through, ensnaring them around the gills, fins, spines, or mid-section when they attempt to escape.

"Hoa`āina" means ahupua`a tenant.

"Holdfast" means a stalked organ by which limu is attached to a substrate.

"Introduced species" means any species that did not occur naturally in Hawai'i prior to introduction caused by human activity. Introduced species are also referred to as non-native species, alien species, or exotic species.

"Invasive species" means an introduced species of marine life that causes or is likely to cause economic or environmental harm or harm to human health.

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym. Kala are also known as bluespine unicornfish, short-nosed unicornfish, spotted unicornfish, or whitemargin unicornfish.

"Kō`ele" means any limpet known as *Cellana talcosa* or any recognized synonym. Kō`ele are also known as giant `opihi, talc limpet, or turtle limpet.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as kole tang, spotted surgeonfish, goldring surgeonfish, or yellow-eyed tang.

"Limu" means any marine alga, including algae in the intertidal zone.

"Makaiāuli" means any limpet known as *Cellana exarata* or any recognized synonym. Makaiāuli are also known as blackfoot 'opihi or Hawaiian blackfoot.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, algae, or other marine animals, including any part, product, egg, or offspring thereof; or any type or species of seaweeds or other marine plants or algae, including any part, product, seed, holdfast, or root thereof.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as six-fingered threadfin or yellowthread threadfin.

"Native limu" means any limu that occurs naturally in Hawai'i, including but not limited to all species of limu, or any recognized synonyms, listed in Exhibit A entitled "Common Native Limu Species of Hawai'i", dated 4/20/23, located at the end of this chapter.

"Native species" means a species that occurs naturally in Hawai'i. Native species include both endemic species and indigenous species.

"'Ōmilu" means any fish known as *Caranx melampygus* or any recognized synonym. 'Ōmilu are also known as bluefin trevally, blue ulua, bluefin jack, bluefin kingfish, bluefinned crevalle, and spotted trevally.

"'Opihi" means any mollusk of the genus *Cellana* or any recognized synonym. 'Opihi are also known as kō'ele, 'ālinalina, makaiāuli, or limpets.

"SCUBA gear" means any equipment adapted, designed, or commonly used to enable a diver to breathe while underwater, including but not limited to SCUBA regulators, high pressure cylinders, rebreathers, SNUBA, and hookah rigs.

"Spotted reef crab" means any crab known as *Carpilius maculatus* or any recognized synonym. Spotted reef crabs are also known as seven-eleven crab, dark-finger coral crab, and large spotted crab.

"State" means the state of Hawai'i.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

"Surround net fishing" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in such a manner as to completely encircle the aquatic life. The gill net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the gill net. The main characteristics of surround net fishing are the closed net configuration, the moving net, person or persons chase the aquatic life into the net, and only the aquatic life that entangles in the net mesh are captured.

"Stretched mesh" means the straight line distance between two opposite inner edges of each eye of the net mesh as measured when the eye is stretched to its maximum size.

"Ta'ape" means any fish known as *Lutjanus kasmira* or any recognized synonym. Ta'ape are also known as bluestripe snapper.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to fish for, catch, injure, kill, remove, capture, confine, or harvest.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually casting or throwing the net over fish or other aquatic life. This gear is also known as a cast net.

"Treble hook" means a hook having three points on a common shank.

"Ula" means any spiny lobster of the genus *Panulirus*. Ula are also known as lobster, Hawaiian spiny lobster, spiny lobster, red lobster, or green lobster.

"Ula pāpapa" means any crustacean of the species *Scyllarides squammosus* or *Scyllarides haanii*, or any recognized synonym. Ula pāpapa are also known as ula 'āpapa, slipper lobster, ridgeback slipper lobster, or shovel-nosed lobster. [Eff 3/25/24] (Auth: HRS

§§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

**§13-60.11-3 Boundaries.** (a) The Kīpahulu CBSFA includes that portion of the southeast coast of the island of Maui consisting of all state waters and submerged lands from Kālepa Gulch in the west to Pua'alu'u Gulch in the east, from the shoreline out to approximately 60 meters in depth. The boundaries of the Kīpahulu CBSFA are described by western and eastern boundary lines, landward and seaward boundary lines, and five reference points (A, G, H, I, and J) identified by their latitude and longitude coordinates as follows:

- (1) Point A is the westernmost point of the Kīpahulu CBSFA along the shoreline, located at 20.646167°, -156.086300.
- (2) Point G is the easternmost point of the Kīpahulu CBSFA along the shoreline, located at 20.667318°, -156.040689°.
- (3) The landward boundary of the Kīpahulu CBSFA is an imaginary line drawn along the shoreline from Point A to Point G.
- (4) The western boundary of the Kīpahulu CBSFA is an imaginary straight line drawn perpendicular to the shore at Point A out to Point H, located on the 60-meter depth contour at 20.637752°, -156.080016°.
- (5) The seaward boundary of the Kīpahulu CBSFA consists three points along the 60-meter depth contour connected by imaginary straight lines beginning at Point H; then to Point I, located at 20.639762°, -156.049777°; then to Point J, located at 20.658495°, -156.028482°.
- (6) The eastern boundary of the Kīpahulu CBSFA consists of an imaginary straight line drawn perpendicular to the shore at Point G to Point J.

The foregoing boundaries and reference points are shown on Exhibit B entitled "Map of the Kīpahulu Community-Based Subsistence Fishing Area, Maui", dated 4/20/23, located at the end of this chapter.

(b) The following sub-zones are established within the Kīpahulu CBSFA:

- (1) The Kukui Bay Sanctuary, which includes all state waters and submerged lands bounded by the shoreline boundary of the Kīpahulu CBSFA from Puhilele Point in the west at 20.654171°, -156.045763° (Point B) to a point on the inside of Kukui Bay at 20.658259°, -156.045675° (Point D), a straight line from Point D to Submarine Point in the west at 20.656429°, -156.046071° (Point C), and a straight line from Submarine Point at Point C to Puhilele Point at Point B; as shown on Exhibit C entitled "Map of the Kukui Bay Sanctuary and 'Ōpihi Rest Area", dated 4/20/23, located at the end of this chapter.
- (2) The 'Ōpihi Rest Area, which includes all state waters and submerged lands within 300 feet from the shoreline between an imaginary line that extends seaward, perpendicular from the shoreline at Point E to 20.658366°, -156.043053° (Point EE) and an imaginary line that extends seaward, perpendicular from the shoreline at Point F to 20.661982°, -156.039876° (Point FF); as shown on Exhibit C entitled "Map of Kīpahulu CBSFA Kukui Bay Sanctuary and 'Ōpihi Rest Area", dated 4/20/23, located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore, as indicated by the vegetation line. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff 3/25/24] (Auth:

HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.6, 190-3)

**§13-60.11-4 Permitted and prohibited activities.**

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Kīpahulu CBSFA any activity or fishing gear otherwise prohibited by law or rules adopted by the Department of Land and Natural Resources or any other department of the State.

(b) The following restrictions apply within the Kīpahulu CBSFA:

- (1) It is unlawful to take or possess more than ten finfish per person per day; provided that akule and introduced or invasive fish species do not count towards the ten finfish bag limit.
- (2) It is unlawful to take any akule for commercial purposes.
- (3) It is unlawful to take or possess more than one 'ōmilu per person per day.
- (4) It is unlawful to take or possess more than two kala per person per day.
- (5) It is unlawful to take or possess any kole less than five inches in length.
- (6) It is unlawful to take or possess any moi:
  - (A) From May through September;
  - (B) Less than eleven inches in length; or
  - (C) Greater than eighteen inches in length.
- (7) It is unlawful to take or possess:
  - (A) More than forty 'opihi of any species per person per day;
  - (B) Any 'opihi with a shell diameter of less than one and one-fourth inches or greater than two inches;
  - (C) Any 'opihi within the 'Opihi Rest Area; or
  - (D) Any 'opihi while diving.
- (8) It is unlawful to take or possess:

§13-60.11-4

- (A) Any ula or ula pāpapa from May through September; or
  - (B) A combined total of more than two ula or ula pāpapa per person per day.
- (9) It is unlawful to take or possess more than two spotted reef crabs per person per day.
  - (10) It is unlawful to take or possess any native limu species with a holdfast or roots attached.
  - (11) It is unlawful to engage in surround net fishing using a gill net with a stretched mesh of less than two and three-fourths inches.
  - (12) It is unlawful to engage in surround net fishing to take any marine life, except akule and ta'ape.
  - (13) It is unlawful to take any marine life using a bag net.
  - (14) It is unlawful for any person who is in the water or on or about the shore where fish can be taken to have in the person's possession a throw net with a stretched mesh of less than three inches.
  - (15) It is unlawful for any person to use more than two fishing poles, provided that each fishing pole may have only one line, and each line may have no more than two hooks, with each hook having only one point, while at or near the shoreline, except that double or treble hooks are allowed when using fishing lures.
  - (16) Except as provided in subsection (c) of this section, it is unlawful for any person to:
    - (A) Take any marine life while using SCUBA gear;
    - (B) Possess both SCUBA gear and marine life at the same time; or
    - (C) Possess both SCUBA gear and fishing gear at the same time.
  - (17) During the time period beginning thirty minutes after sunset until thirty minutes before sunrise, it is unlawful to:

- (A) Take or possess any marine life while diving; or
  - (B) Possess any fishing gear while diving.
- (18) It is unlawful to take or possess any marine life within the Kukui Bay Sanctuary.
- (c) The department may issue a permit to allow any action prohibited under subsection (b)(16) of this section for the purposes of:
- (1) Taking akule while surround net fishing; or
  - (2) Taking introduced or invasive species of marine life. [Eff 3/25/24] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

**§13-60.11-5 Transit through Kīpahulu CBSFA with restricted gear and species.** Prohibited gear and restricted species as described in section 13-60.11-4 may be possessed while onboard a vessel in active transit through the areas, provided that no prohibited gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit. [Eff 3/25/24] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

**§13-60.11-6 Penalty.** (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 188-70, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff 3/25/24] (Auth: HRS §§187A-5, 188-22.6,



§13-60.11-6

188-53, 190-3) (Imp: HRS §§187A-5, 187A-12.5, 188-22.6, 188-70, 190-5)

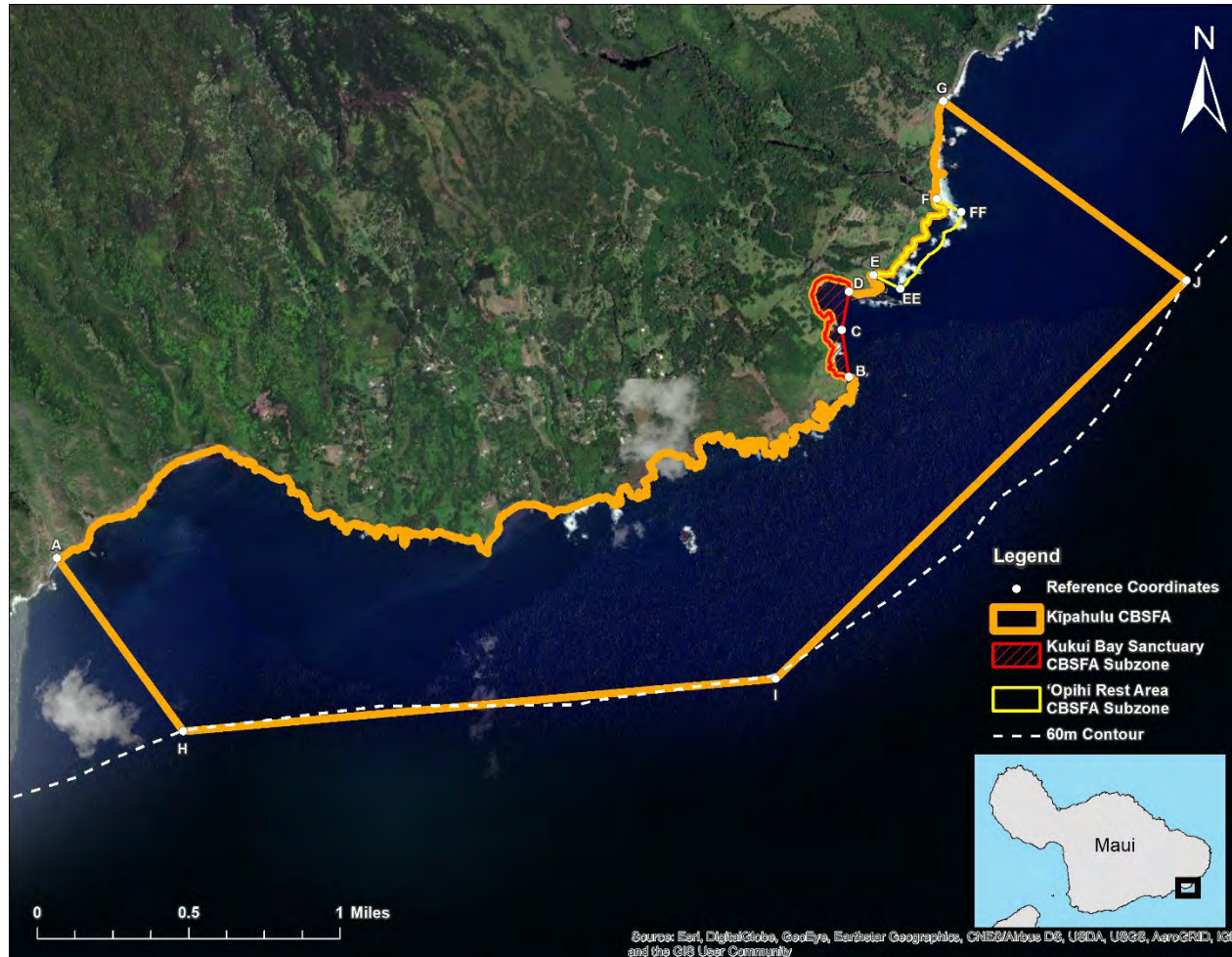
**§13-60.11-7 Asset forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff 3/25/24] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

**§13-60.11-8 Severability.** If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 3/25/24] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-53, 190-3)

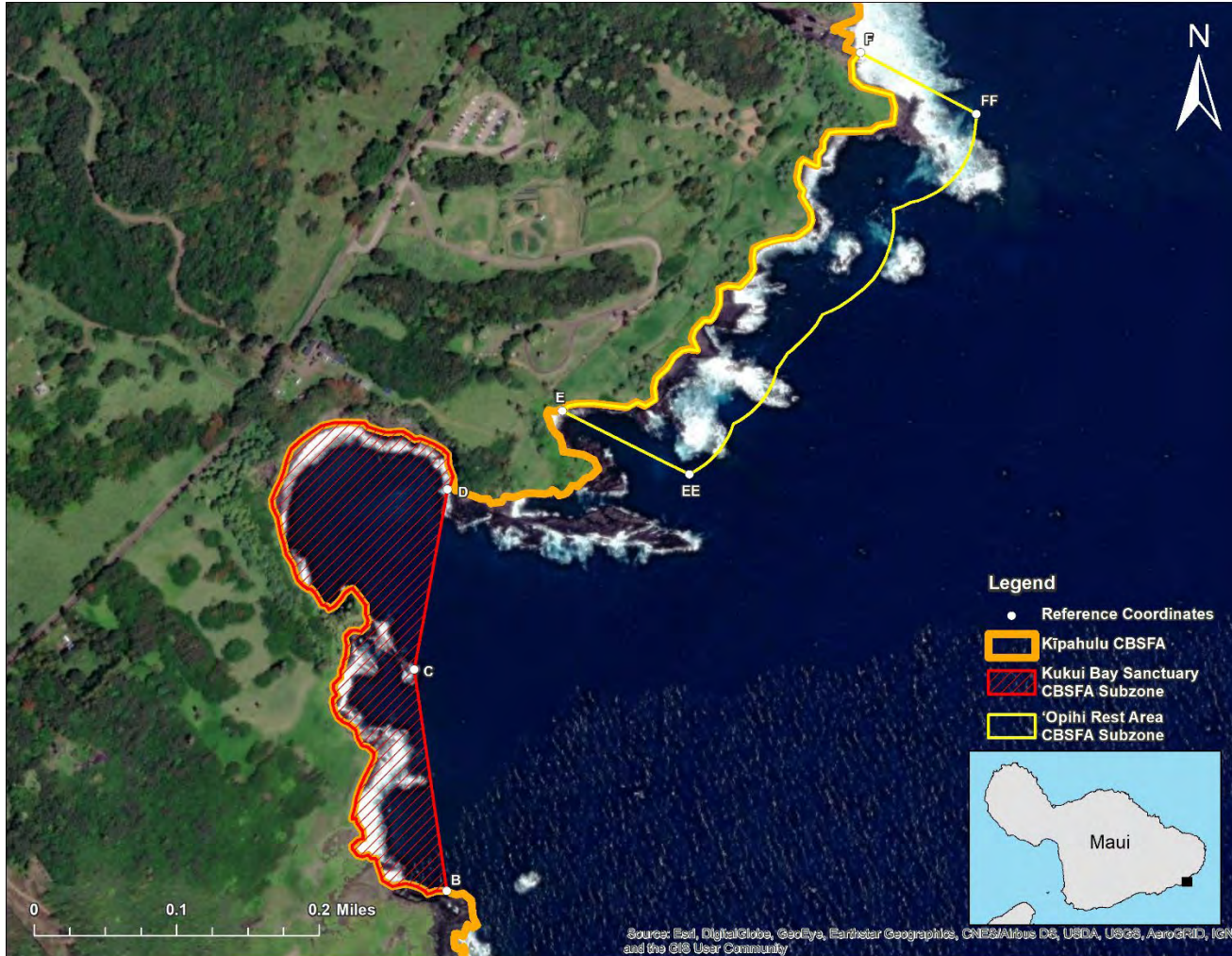
**EXHIBIT A:** "COMMON NATIVE LIMU SPECIES OF HAWAI'I" (4/20/23)

<b>Phylum</b>	<b>Species</b>	<b>Hawaiian/Common Name</b>
Rhodophyta	<i>Ahnfeltiopsis flabelliformis</i>	Nei, kō'ele'ele, kō'ele
Rhodophyta	<i>Ahnfeltiopsis concinna</i>	'Aki'aki, 'eleau (Maui)
Rhodophyta	<i>Asparagopsis taxiformis</i>	Kohu, līpehe, līpehu, līpa'akai
Rhodophyta	<i>Gracilaria coronopifolia</i>	Manaua, short ogo (Japanese)
Rhodophyta	<i>Gracilaria parvispora</i>	Manaua loloa, long ogo (Japanese)
Rhodophyta	<i>Grateloupia filicina</i>	Huluhuluwaena, pakeleawa'a
Rhodophyta	<i>Halymenia hawaiiiana</i>	Lepe-o-Hina, lehelehe'īlio, lepelepe-o-Hina, limu-pepe-o-Hina, pā'ū-o-Hi'iaka
Rhodophyta	<i>Laurencia dotyi</i>	Līpe'epe'e, līpēpē
Rhodophyta	<i>Laurencia nidifica</i>	Māne'one'o
Rhodophyta	<i>Laurencia succisa</i>	Līpe'epe'e, līpēpē
Rhodophyta	<i>Pyropia vietnamensis</i>	Pāhe'ehe'e, līpahe'e, līpahe'ehe'e, līpāhoe, pahe'e
Chlorophyta	<i>Codium edule</i>	Wāwae'iole
Chlorophyta	<i>Codium reediae</i>	'A'ala'ula
Chlorophyta	<i>Ulva lactuca</i>	Pālahalaha
Chlorophyta	<i>Ulva prolifera</i>	'Ele'ele
Ochrophyta (Class: Phaeophyceae)	<i>Dictyopteris australis</i>	Līpoa
Ochrophyta (Class: Phaeophyceae)	<i>Dictyopteris plagiogramma</i>	Līpoa
Ochrophyta (Class: Phaeophyceae)	<i>Sargassum aquifolium</i>	Kala
Unknown	Unknown (Description: Looks like limu kohu, except it flattens when taken out of the water; doesn't have a strong smell like limu kohu and tastes spicy)	Pehu

**Exhibit B:** "Map of the Kīpahulu Community-Based Subsistence Fishing Area, Maui"  
(4/20/23)



**Exhibit C:** "Map of the Kukui Bay Sanctuary and the 'Opihi Rest Area" (4/20/23)





DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 60.11, Hawaii Administrative Rules, on the Summary Page dated January 12, 2024, was adopted on January 12, 2024, following one hybrid public hearing held on November 2, 2023, after public notice was given in the Honolulu Star-Advertiser on October 1, 2023.

The adoption of chapter 60.11 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ DAWN N.S. CHANG

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

APPROVED:

/s/ JOSH GREEN

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JOSH GREEN, M.D.  
Governor  
State of Hawai'i

3/15/24

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

/s/ MELISSA D. GOLDMAN

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MELISSA D. GOLDMAN  
Deputy Attorney General

3/15/24

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Filed

**HAR Chapter 13-74 License and Permit Provisions and Fees for Fishing, Fish, and Fish Products**

- § 13-74-1 Definitions
- § 13-74-4 Penalties, generally
- § 13-74-20 Commercial marine license
- § 13-74-22 Bait license
- § 13-74-23 Commercial marine vessel license
- § 13-74-43 Aquaculture license
- § 13-74-45 Commercial marine dealer license

Amendment and Compilation of Chapter 13-74  
Hawaii Administrative Rules

(Date of Adoption)

1. Chapter 13-74, Hawaii Administrative Rules, entitled "License and Permit Provisions and Fees for Fishing, Fish, and Fish Products", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 74

LICENSE AND PERMIT PROVISIONS AND FEES  
FOR FISHING, FISH, AND FISH PRODUCTS

Subchapter 1 General Provisions

§13-74-1 Definitions  
§13-74-2 General license and permit conditions  
§13-74-3 Suspension, revocation, and non-issuance  
of licenses and permits, generally  
§13-74-4 Penalties, generally  
§13-74-4.5 Asset forfeiture  
§§13-74-5 to 13-74-9 (Reserved)

Subchapter 2 Recreational Fishing

§13-74-10 Freshwater game fishing license



§13-74-11 Nonresident recreational marine fishing  
license

§§13-74-12 to 13-74-19 (Reserved)

### Subchapter 3 Commercial Fishing

§13-74-20 Commercial marine license

§13-74-21 Repealed

§13-74-22 Bait license

§13-74-23 Commercial marine vessel license

§§13-74-24 to 13-74-39 (Reserved)

### Subchapter 4 Other Licenses and Permits

§13-74-40 Mullet pond operator and closed season  
sales license

§13-74-41 Kona crab and lobster closed season  
sales license

§13-74-42 Special marine animal or product  
possession and sale license

§13-74-43 Aquaculture license

§13-74-44 License to sell reared species

§13-74-45 Commercial marine dealer license

§13-74-46 Commercial marine dealer report

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§13-74-1 Definitions.** As used in this chapter,  
unless otherwise provided:

"Aquatic life" means any type of species of  
mammal, fish, amphibian, reptile, mollusk, crustacean,  
arthropod, invertebrate, coral, or other animal that  
inhabits the freshwater or marine environment and  
includes any part, product, egg, or offspring thereof;  
or freshwater or marine plants, including seeds,  
roots, products, and other parts thereof.

"Baitfish" means any of the species listed in section 13-74-22.

"Baitfishing report" means a monthly report that is furnished to the department with respect to any baitfish taken.

~~["Board" means the board of land and natural resources.]~~

"Bottomfish fishing activity" means those fishing activities associated with the taking of bottomfish while on a vessel.

"Catch report" means a monthly report that every commercial marine licensee shall furnish to the department with respect to the marine life taken.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Commercial marine license" means [a] any license issued to take marine life within or outside the State for commercial purpose.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 189-2, HRS.

"Commercial marine vessel license" means a license issued to an individual for a specific vessel that allows all crew on board the vessel to take marine life within or outside the State for commercial purpose without requiring each crew member to possess an individual commercial marine license.

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

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

"Fishing", "fishing activities", or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear

~~[which]~~ that is designed to catch, take, or harvest aquatic life, by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be caught, taken, or harvested, ~~[shall be]~~ is deemed to be fishing.

"Freshwater game fishes" means those introduced freshwater fishes as listed in section 13-99-2.

"Freshwater game fishing license" means a license issued to take freshwater game fishes.

"License period" means the period of time during which the license is or was valid.

"Licensee" means any person who has been issued a license pursuant to this chapter.

"Main Hawaiian islands" means those islands, reefs, and shoals, as well as their respective appurtenant reefs and territorial waters of the Hawaiian Islands chain beginning and including the island of Ni`ihau to and including the island of Hawai`i.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Nonresident" means any individual who is not a resident of the State of Hawai`i.

~~["Northwestern Hawaiian Islands" means those islands, reefs, and shoals, as well as their respective appurtenant reefs and territorial waters of the Hawaiian Islands chain beginning and including Nihoa island to and including Kure island.]~~

"Permittee" means any person who has been issued a permit pursuant to this chapter.

"Person" means an individual, partnership, firm, company, corporation, association, or other entity.

"Qualified aquaculturist" means a person, or association of persons, actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities.

"Resident" means an individual that has established the individual's primary residence and

worked in the State continuously for a period of twelve months or longer immediately prior to applying for[-] or obtaining a license or permit, or has filed or paid the individual's State income taxes for the previous tax period[-], or has established domicile in the State. Domicile may be established by providing documentation including a valid Hawai'i driver's license or identification card, a valid school identification card, or any other official document issued to the individual within the previous thirty days from a government agency, financial institution, insurance company, or utility company.

"Trip" means any bout of fishing activity occurring in state marine waters in the course of a one way or round trip, and generally includes when a vessel has left port or shore until it puts into port or goes ashore, even if not to the point of origin. [Eff 8/12/93; am 10/18/10; comp 8/27/21; am and comp ] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6)

**§13-74-2 General license and permit conditions.**

Except as otherwise provided:

- (1) All licenses and permits issued pursuant to this chapter are non-refundable and non-transferable and ~~[shall be]~~ are valid for not longer than one year from the date of issuance. A duplicate license or permit may be issued upon affidavit that the original has been lost or destroyed, and upon payment of a duplicate license fee; provided that the duplicate license or permit shall expire on the same date as when the original license or permit would have expired;
- (2) A licensee or permittee shall show the license or permit and confirming identification upon the demand of any officer authorized to enforce the fishing

laws of the State. No person shall refuse any such officer the examination of the license or permit and confirming identification, or inspection of any bag or container of any kind that could reasonably be used to carry any aquatic life or any vehicle or conveyance used to transport any aquatic life if such officer ~~[has probable cause, as provided by law, to believe that such bag, container, vehicle, or conveyance contains evidence of a violation of the fishing laws of the State.]~~ reasonably believes that the person is, or recently has been, engaged in fishing activities.

Failure or refusal to show the license or permit and confirming identification or examination and search of any bag, container, vehicle, or conveyance ~~[shall be]~~ is prima facie evidence of a violation of this chapter and sufficient cause for the immediate revocation of the license or permit by the ~~[board,]~~ department;

- (3) No licensee or permittee shall allow any other person to carry, display, or use the license or permit, except if the license or permit is issued ~~[to]~~ for a vessel;
- (4) The department or its agents may issue licenses and permits as authorized by law, and with such conditions necessary to manage, protect, and conserve aquatic life;
- (5) Should a monthly report be required by any license or permit, such report shall be rendered to the department as a true and correct statement of such information the department may require, on or before the tenth day of the following month in which the aquatic resources were taken or purchased, except for the Kona crab and lobster closed season sales license issued pursuant to section 13-74-41 whose report shall be rendered five days after the end of each of the closed season months on forms

either furnished by, or approved by the department;

- (6) Should a trip report be required as a condition of any license or permit, the report shall be timely submitted to the department as a true and correct statement of such information the department may require, on or before the fifth day following the last day of each trip in which aquatic life was landed. A trip report includes such information but is not limited to: start and end dates of the trip, locations fished, hours spent fishing at each location; numbers, kinds and weights of aquatic life caught, released, or lost to predators; and
- (7) Any information submitted to the department as required under this section or chapters 187A, 188, and 189, HRS, [~~shall be~~ is confidential and shall not be disclosed, except when required under court order or by the state attorney general's office subpoena, or with the prior written consent of the person submitting the information, or under cooperative agreements with United States government agencies for the exchange and use of the information specifically to manage aquatic resources. The department may establish procedures to preserve the confidentiality of submitted information, except that the department may release or make public information in the aggregate or summary form that does not directly or indirectly disclose the identity of any person who submits information. [Eff 8/12/93; am 1/15/99; am 10/18/10; comp 8/27/21; am and comp ]
- (Auth: HRS §§187A-5, 187A-5.5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10) (Imp: HRS §§187A-2, 187A-5, 187A-12.4, 187A-15, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-

3.5, 189-6, 189-10)

**§13-74-3 Suspension, revocation, and non-issuance of licenses and permits, generally.** Except as may be otherwise provided, the ~~[board]~~ department may:

- (1) Suspend any and all licenses and permits issued pursuant to this chapter when such action is necessary for the protection and conservation of the aquatic life;
- (2) Revoke any license or permit issued pursuant to this chapter for any infraction of the terms and conditions of the license or permit and any person whose license or permit was revoked shall not be eligible to be issued another license or permit until the expiration of one year from the date of revocation, unless another time period is specified;
- (3) In any proceeding for the revocation of ~~[a-commercial-marine]~~ any license or permit issued pursuant to ~~[section 13-74-20,]~~ this chapter, the licensee or permittee shall be given notice and opportunity for hearing in conformity with chapter 91, HRS. Upon revoking the license~~[,]~~ or permit, the ~~[board]~~ department may specify a period of time during which the ~~[commercial]~~ licensee or permittee shall not be eligible to be issued another license; provided that the period shall not exceed one year from the date of revocation; and
- (4) Refuse to issue any license or permit to a person who is not legally admitted to the United States, who does not provide proper identification, who has unresolved violations of any license or permit issued pursuant to this chapter, or for other just cause. Should the department refuse to issue any license or permit, the department shall give the person notice and an opportunity

for hearing in accordance with chapter 91, HRS. [Eff 8/12/93; am 1/15/99; comp 8/27/21; am and comp ] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 189-2, 189-5, 189-6) (Imp: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 189-2, 189-3, 189-5, 189-6)

**§13-74-4 Penalties, generally.** (a) [A] Unless otherwise provided, any person violating any provision of this chapter, or the terms and conditions of any license or permit issued [as provided by] pursuant to this chapter, [shall be punished as provided by law.] is subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by sections 187A-13, 188-70, and 189-4, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the State. [Eff 8/12/93; am 1/15/99; comp 8/27/21; am and comp ] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 187A-12.5, 187A-13, 188-45, 188-50, 188-53, 189-2, 189-6)

**§13-74-4.5 Asset forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or any of the terms and conditions of any license or permit issued pursuant to this chapter may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp ] (Auth: HRS §§187A-5, 187A-12.5, 188-44, 188-45, 188-50, 188-53, 188-57,



SUBCHAPTER 2

RECREATIONAL FISHING

**§13-74-10 Freshwater game fishing license.** (a)

No person [~~, except children below nine years of age,~~] shall fish, take, or catch any introduced [~~fresh-water~~] freshwater game fish without first obtaining a freshwater game fishing license, provided that children [~~exempt by this section~~] under nine years of age may fish without a license [~~only~~] when accompanied by a licensed adult.

(b) [~~Licenses~~] Freshwater game fishing licenses shall require the person's name, address, domicile, or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes.

(c) The fee for the freshwater game fishing license [~~shall be:~~] is:

- (1) Minors [~~between nine and~~] under fifteen years of age, \$3;
- (2) Residents [~~over~~] fifteen [~~and under~~] years of age, up to, but not including, sixty-five years of age, \$5;
- (3) Persons sixty-five years of age and older, free;
- (4) Persons not qualifying under paragraph (1), (2), or (3) but over fifteen years of age, \$25, except that:
  - (A) Members of the armed forces of the United States on active duty in the State whether qualifying as a resident or not, and their [~~spouse~~] spouses and children fifteen years of age and over, \$5;
  - (B) [~~7-Day~~] Seven-day tourist license which is valid for only seven days from the date of issue, \$10; and

- (C) Tourist license which is valid for only thirty days from the date of issue, \$20; and
- (5) Duplicate license, \$1. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp ] (Auth: HRS §§187A-5, 188-50) (Imp: HRS §§187A-5, 188-50)

**§13-74-11 Nonresident recreational marine fishing license.**

(a) It is unlawful for any nonresident of the State who has attained the age of fifteen, except members of the armed forces of the United States on active duty in the State and their spouses and minor children, to fish for, take, or catch any marine life for noncommercial or recreational purposes without first obtaining a nonresident recreational marine fishing license.

(b) Licenses shall require the person's name, address, date of birth, height, weight, color of hair and eyes, and such other information as the department may require.

(c) The fee for the nonresident recreational marine fishing license is:

- (1) For a one-day fishing license, \$20;  
(2) For a seven-day fishing license, \$40; and  
(3) For an annual fishing license, \$70.

(d) Any person violating this section is subject to administrative penalties as provided by section 187A-12.5, HRS. [Eff and comp

] (Auth: HRS §188-72) (Imp: HRS §§187A-12.5, 188-72)

SUBCHAPTER 3

COMMERCIAL FISHING

**§13-74-20 Commercial marine license.** (a) No

person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license~~[-]~~; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons taking marine life for commercial purposes aboard a validly-licensed vessel.

~~(b)~~ ~~[Additionally, any]~~ Any person providing [vessel] charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license~~[-]~~; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons providing charter services for the taking of marine life aboard a validly-licensed vessel.

~~[(b)]~~ ~~(c)~~ ~~[Licenses to persons with proof of identity to engage in the activities described in subsection (a)]~~ Commercial marine licenses shall require the person's name, address, age, place of birth, ~~[length of residence in the State,]~~ residency, height, weight, color of hair and eyes, citizenship, and such other information as the department may require. The department may require an applicant for a commercial marine license to show proof of identity prior to issuance or renewal of a license.

~~[(c)]~~ ~~(d)~~ The fee for the issuance or renewal of a commercial marine license ~~[shall be:]~~ is:

- (1) \$100 for residents; and
- (2) \$250 for all other persons.

The fee for a duplicate license ~~[shall be]~~ is \$10.

~~[(d)]~~ ~~(e)~~ No person may:

- (1) Renew a commercial marine license more than two months prior to its expiration date; or
- (2) Be issued more than one commercial marine license at any one time~~[-]~~; provided that a person may hold a commercial marine license simultaneously with commercial marine vessel licenses or other licenses issued pursuant to this chapter.

~~[(e)]~~ (f) ~~[The department may require persons issued the commercial marine license to]~~ Commercial marine licensees shall submit reports of their fishing activity. Such reports shall be submitted to the department monthly~~[+]~~ pursuant to section 13-74-2(5); provided that persons taking bottomfish as defined in chapter 13-94, in the main Hawaiian islands, shall, in addition to their monthly report for species other than bottomfish, submit trip reports of their bottomfish fishing activity ~~[if requested.]~~ pursuant to section 13-74-2(6). ~~[The monthly]~~ Monthly and trip reports ~~[shall be]~~ are subject to section 13-74-2, and sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law. [Eff 8/12/93; am 1/15/99; am 10/18/10; am 1/7/18; am and comp 8/27/21; am and comp ] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

~~[\$13-74-21 Northwestern Hawaiian Islands fishing permit.]~~ (a) ~~The department may issue permits to commercial marine licensees who own or operate a vessel deemed capable by the department for effectively taking marine life within the Northwestern Hawaiian Islands, to fish for such marine life, or utilize methods or appliances which may be regulated or prohibited elsewhere within the State. The department may limit the number of permits issued to take marine life in any particular area and such limitation shall be on the basis of the order of application for permits.~~

~~(b) A separate permit shall be required for each fishing vessel or independent fishing operation, regardless of whether several vessels or operations are owned or conducted by the same person, and shall be carried aboard each vessel or otherwise be readily available for inspection at all times.~~

~~(c) The fee for the Northwestern Hawaiian Islands fishing permit shall be \$50 and the duplicate license fee shall be \$10.]~~ [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; R ] (Auth: HRS

§188-37) (Imp: HRS §188-37)

Historical note: §13-74-21 is based substantially upon chapter 13-46. [Eff 5/28/81; am 1/25/82; R 8/12/93]

**§13-74-22 Bait license.** (a) The department may issue to commercial marine licensees a license to take the following baitfishes for which an open season is declared:

- (1) 'Iao (*Atherinomorus insularum*);
- (2) Marquesan sardine (*Sardinella marquensis*);
- (3) Nehu (*Encrasicholina purpurea*);
- (4) Piha (*Spratelloides delicatulus*);
- (5) "Tabai" (*Mollienesia* spp.);
- (6) Threadfin shad (*Dorosoma petenense*); and
- (7) Gold-spot herring (*Herklotsichthys quadrimaculatus*).

(b) Licenses for taking baitfishes other than nehu shall be issued for fishing operations where the fish caught are landed in the State, and where no baitfish caught are sold or transferred except for bait purposes.

(c) Licenses for taking nehu shall be issued only to persons employed on live-bait tuna boats, and only if their principal means of livelihood is derived from tuna fishing and the sale of tuna, where the fish caught are landed in the State, and the nehu is not sold to others.

(d) A separate license [~~shall be~~] is required for each fishing vessel or independent fishing operation, regardless of whether several vessels or operations are owned or conducted by the same person, and shall be carried aboard each vessel or otherwise be readily available for inspection at all times.

(e) The fee for the bait license [~~shall be \$50~~] is \$100, and the duplicate license fee [~~shall be~~] is \$10.

(f) Each person issued a bait license shall, in addition to monthly catch reports pursuant to section 13-74-20, submit baitfishing reports to the

department. The baitfishing reports shall be submitted monthly in a form and manner provided by the department. The catch reports and baitfishing reports are subject to section 13-74-2; sections 189-3 and 189-3.5, HRS; and as may be otherwise provided by rule or law. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp

] (Auth: HRS §§187A-5, 188-45) (Imp: §§187A-5, 188-45)

Historical note: §13-74-22 is based substantially upon chapter 13-72. [Eff 5/26/81; am 1/25/82; R 8/12/93]

**13-74-23 Commercial marine vessel license. (a)**

The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial marine vessel license to any qualified individual.

(b) A qualified individual is anyone who:

(1) Possesses a valid commercial marine license;

(2) Is at least eighteen years old;

(3) Provides proof of identify; and

(4) Does not have any unmet child support obligations pursuant to section 189-2, HRS.

(c) Any qualified individual applying for a commercial marine vessel license shall file an application on an approved application form that is available from the department. The application shall be completed in its entirety. Failure to provide a completed application or providing false or misleading information on the application may result in delay or denial of the application.

(d) A commercial marine vessel license is valid from the date of issuance and shall expire on the expiration date of the licensee's commercial marine license. A commercial marine vessel license is valid only for a specific vessel and is nontransferable. A qualified individual may obtain and possess more than one commercial marine vessel license at a time.

(e) The fee for the issuance or renewal of a

commercial marine vessel license is:

- (1) \$100 for any vessel less than twenty-two feet in length that is not used for longline fishing;
- (2) \$200 for any vessel twenty-two feet in length or greater that is not used for longline fishing; and
- (3) \$1,500 for any vessel used for longline fishing, as defined in section 189-2.5, HRS.

The fee for a duplicate license is \$10.

(f) If a commercial marine vessel license is issued for a longline vessel, the commercial marine vessel licensee shall file an annual report with the department that contains the following information about all crew members who worked aboard the longline vessel during the license period:

- (1) Identity;
- (2) Nationality;
- (3) Arrival date in Hawai'i
- (4) Departure date; and
- (5) Any other information the department may require.

The longline annual report shall be submitted to the department within thirty days of the end of the license period.

(g) If a commercial marine vessel license is issued for a vessel providing charter services for the taking of marine life, the license shall satisfy the commercial marine license requirement for all crew members. The commercial marine vessel license does not exempt charter fishing vessel passengers or customers from the requirement to have a nonresident recreational marine fishing license or any other license required by law. For purposes of this section, a "passenger" is any individual on board a vessel who is not a member of the vessel's crew.

(h) If a vessel for which a commercial marine vessel license is obtained is lost, destroyed, stolen, sold, transferred, or otherwise no longer in the possession or control of the licensee, the licensee shall immediately notify the department, and the license shall be terminated.

(i) The commercial marine vessel license shall be kept aboard the vessel at all times while participating in commercial fishing activities and shall be made available for inspection upon demand.

(j) Persons issued a commercial marine vessel license shall submit reports of the vessel's fishing activity. Such reports shall be submitted to the department monthly pursuant to section 13-74-2(5); provided that persons taking bottomfish, as defined in chapter 13-94, in the main Hawaiian islands shall, in addition to their monthly reports for species other than bottomfish, submit trip reports of their bottomfishing activity pursuant to section 13-74-2(6). Monthly and trip reports are subject to section 13-74-2; sections 189-3 and 189-3.5, HRS; and as may be otherwise provided by law. [Eff and comp ] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-)3.5

#### SUBCHAPTER 4

#### OTHER LICENSES AND PERMITS

**§13-74-40 Mullet pond operator and closed season sales license.** (a) The department may issue to any owner or operator of a fish pond a license to lawfully catch young mullet, known as pua, during the closed season, for the purpose of stocking the owner's or operator's pond, and provided that any owner or operator of a fish pond and any dealer may lawfully sell such pond raised mullet during the closed season with such a license granting this privilege.

(b) A separate license [~~shall be~~] is required for each fish pond or market operation, regardless of whether several fish pond or market operations from which the mullet are sold are owned or operated by the same person, and shall be readily available for inspection at all times.

(c) The fee for the mullet pond operator and



closed season sales license [~~shall be \$50~~] is \$100, and the duplicate license fee [~~shall be~~] is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp ] (Auth: HRS §188-44) (Imp: HRS §188-44)

**§13-74-41 Kona crab and lobster closed season sales license.** (a) The department may issue a license to a commercial marine dealer, or any restaurant, to sell or serve during the closed season, Kona crabs or lobsters lawfully caught during the open season.

(b) Each licensee shall submit a report to the department within five days after the end of each of the closed season months. The report shall list the amount of remaining Kona crab and lobster in the licensee's inventory as of the end of the month.

(c) The fee for the Kona crab and lobster closed season sales license [~~shall be \$50~~] is \$100, and the duplicate license fee [~~shall be~~] is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp ] (Auth: HRS §188-57) (Imp: HRS §188-57)

**§13-74-42 Special marine animal or product possession and sale license.** (a) The department may issue a license to an importer, wholesaler, retailer, or restaurant to possess, sell, or offer for sale, any fish, shellfish, crustacean, or other marine animal, or any product made from such marine animals taken outside of the waters of the State, when such taking, possession, or sale of the same species is restricted if taken within the waters of the State.

(b) Licenses shall require the business' name, address, telephone number, name of applicant, and any other information the department may require.

(c) Each licensee shall furnish to the department monthly reports that include the following information:

(1) If the licensee is an importer:

- (A) Species imported, source, quantity, and arrival date; and
- (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (2) If the licensee is a wholesaler:
  - (A) Source, quantity, and date purchased; and
  - (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (3) If the licensee is a retailer or restaurant:
  - (A) Source and date of purchase; and
  - (B) Species and quantity sold~~[7]~~; and
- (4) [~~And any~~] Any other such information the department may require.
- (d) The fee for the special marine animal or product possession and sale license [~~shall be \$50~~] is \$100, and the duplicate license fee [~~shall be~~] is \$10.  
 [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp ] (Auth: HRS §189-6)  
 (Imp: HRS §189-6)

Historical note: §13-74-42 is based substantially upon chapter 13-71. [Eff 5/26/81; R 8/12/93]

**§13-74-43 Aquaculture license.** (a) After review of a written application, the department may issue to any qualified aquaculturist~~[7]~~ a license to fish for, rear, possess, or sell any [~~regulated~~] aquatic life~~[7]~~ whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit; provided that the qualified aquaculturist rears or reared the [~~regulated~~] aquatic life in an aquaculture facility for commercial purpose. To qualify for a license a qualified [~~aquaculturists~~] aquaculturist must satisfy the department that the qualified aquaculturist is able to maintain aquatic life or live rock alive and in good health in an aquaculture facility at all times in accordance with industry-wide standards.

(b) The licensee shall make and issue a receipt whenever a transaction concerning regulated aquatic

life occurs. The receipt shall be a written record of the transaction and shall include:

- (1) The transaction date;
- (2) The name and address of the licensee, the name of the person issuing the receipt, and the name and address of the person to whom the receipt is issued, except that the name and address of the person to whom the receipt is issued are not required if the transaction is with a person who will not resell the regulated aquatic life;
- (3) The name, weight, number or other appropriate measure of quantity, and value of all regulated aquatic life involved in the transaction; and
- (4) Any other information the department may require.

(c) The licensee shall keep all receipts on file and be able to present such receipts for inspection upon demand of any officer authorized to enforce the laws of the State. The receipts shall be kept for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction.

(d) The licensee shall submit to the department a summary report on or before July 31<sup>st</sup> of each year, covering the previous twelve-month period between July 1<sup>st</sup> to June 30<sup>th</sup>. The report shall provide an accounting of the regulated aquatic life received, bought, sold, transferred, or exchanged. The accounting shall include the items involved in a transaction, the sum of the weight, number or other appropriate unit of quantity, and value, along with any other information the department may require.

(e) Licensees that rear live rocks shall only use rocks for producing live rocks obtained from legal sources such as quarries or dredging operations [~~and may not fish for~~]. Harvesting, collecting, or otherwise obtaining live rocks from the wild[.] is strictly prohibited.

(f) Unless authorized in writing by the department, licensees shall not:

- (1) Release cultured aquatic life or live rock into state waters;
- (2) Fish for, in state waters, any regulated aquatic life or live rock;
- (3) Fish in areas where fishing is restricted by law; or
- (4) Use gear that the department has declared illegal except for small meshed nets, provided the net is not a small meshed thrownet.

(g) The department may restrict or prohibit the rearing of any aquatic life as authorized by this section, such as those species whose entry into or possession in the State is restricted or prohibited pursuant to the rules of the department of agriculture, those species that the state or federal governments may list as threatened or endangered, or any aquatic life the department may determine to be unsuitable for commercial rearing in the State or otherwise potentially detrimental to living aquatic resources in the State.

(h) The department may require licensees:

- (1) Who fish in the wild for regulated aquatic life to report such catches and to include in the report the species, numbers, size, fishing location, amount of fishing effort, and any other information for the purpose of ~~[this]~~ the license. The regulated aquatic life taken from the wild may only be used for stocking into the aquaculture facility as juveniles or used as adults to provide broodstock material. The licensee may not sell or offer for sale any regulated aquatic life taken from the wild that is less than the minimum size as specified by law;
- (2) To obtain a Conservation District Use Permit pursuant to chapter 13-53, Hawaii Administrative Rules ~~[(HAR)]~~, and a Right of Entry Permit pursuant to chapter 171, HRS, in addition to any other requirement of law;

[and]

- (3) To provide a list of names of [~~commercial marine dealers~~] any person that will buy or obtain any regulated aquatic life that [~~were~~] was reared in the licensee's aquaculture facility. Any changes to the list shall be in writing[~~;~~]; and
- (4) To submit additional monthly reports, trip reports, or other reports as required by the department.

(i) [~~Each aquaculture facility shall have a separate license,~~] A separate license shall be obtained for each aquaculture facility that rears, possesses, or sells regulated aquatic life, even if one person owns or operates several aquaculture facilities. A copy of the license shall be available for inspection upon the demand of any officer authorized to enforce the laws of the State, including whenever the regulated aquatic life are fished for, delivered, transported, or sold. The license shall be kept at the facility for immediate inspection.

(j) For purposes of this section:

"Aquaculture facility" means any farm, ranch, hatchery, pond, workplace, or place of business that is designed or intended for the rearing, breeding, or culturing of aquatic life or live rock in a controlled or managed salt, brackish, or freshwater environment.

"Regulated aquatic life" means any aquatic life or live rock whose fishing for, possession, or sale is [~~regulated during~~] prohibited by a closed season, [~~or when regulated by a~~ minimum size, or bag limit as specified in subtitle 5 [~~or~~] of title 12, HRS, or administrative rules.

(k) The license fee [~~shall be \$50.~~] is \$100, and the duplicate license fee is \$10. [Eff 8/8/96; comp 8/27/21; am and comp ] (Auth: HRS §§187A-3.5, 187A-5, 188-44, 188-68) (Imp: HRS §§187A-3.5, 187A-5, 188-44, 188- 68)

**§13-74-44 License to sell reared species. (a)**

The department may issue to any person a license to possess, sell, or offer for sale ~~[regulated]~~ any aquatic life~~[7]~~ whose possession or sale is prohibited by a closed season, minimum size, or bag limit; provided that ~~[a qualified aquaculturist has reared]~~ the ~~[regulated]~~ aquatic life was reared in a licensed aquaculture facility.

(b) The licensee shall keep a receipt issued by the licensed aquaculture facility when receiving or buying the regulated aquatic life.

(c) The licensee shall issue a receipt to the person to whom the regulated aquatic life is sold or transferred. The receipt shall be a written record of the transaction and shall include:

- (1) The transaction date;
- (2) The names and addresses of the licensee, the person issuing the receipt, and the person to whom the receipt is issued, except that the name and address of the person to whom the receipt is issued are not required if the transaction is with a person that will not resell the regulated aquatic life;
- (3) The name, weight, number or other appropriate measure of quantity, and value of all regulated aquatic life involved in the transaction; and
- (4) Any other information the department may require.

(d) The licensee shall keep on file and be able to present for inspection upon demand of any officer authorized to enforce the laws of the State, a copy of all receipts for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction.

(e) ~~[Each market outlet that sells or offers for sale the regulated aquatic life shall have a separate license,]~~ A separate license shall be obtained for each market outlet that sells or offers for sale the regulated aquatic life, even if the same person owns

or operates several outlets. The license shall be kept at the market outlet for immediate inspection upon demand of any officer authorized to enforce the laws of the State.

(f) The department may require submittal of monthly reports, pursuant to the purposes of this section.

(g) For the purposes of this section:

"Licensed aquaculture facility" means any aquaculture facility licensed pursuant to section 13-74-43.

"Regulated aquatic life" means any aquatic life or live rock whose fishing for, possession, or sale is [~~regulated during~~] prohibited by a closed season, [~~or when regulated by a~~] minimum size, or bag limit as specified in subtitle 5 of title 12 or administrative rules.

(h) The fee for the license [~~shall be waived with the~~] \$200. The license is valid for not longer than two years [~~from the date of issuance.~~], and the duplicate license fee is \$10. [Eff 8/8/96; am 5/22/00; comp 8/27/21; am and comp

] (Auth: HRS §§187A-3.5, 187A-5)

(Imp: HRS §§187A- 3.5, 187A-5)

**§13-74-45 Commercial marine dealer license.** (a)

No person shall sell, offer for sale, exchange, or act as an agent in the sale, exchange, or transfer of marine life obtained directly from a commercial marine licensee, unless the person possesses a valid commercial marine dealer license; provided that a commercial marine licensee who sells or exchanges self-caught marine life at retail and complies with the reporting requirements of section 13-74-2 shall not be required to hold a commercial marine dealer license.

(b) A commercial marine dealer licensee shall not sell or offer for sale, purchase or attempt to purchase, exchange, or act as an agent in the sale, exchange, or transfer of any marine life taken within

the jurisdiction of the State for commercial purpose that is obtained from any person who does not have a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for commercial purpose.

(c) Each market outlet where marine life that is obtained directly from a commercial marine licensee is sold for commercial purposes shall have a separate commercial marine dealer license, even if one person owns or operates several market outlets. A copy of the license shall be kept at the market outlet and shall be made available for immediate inspection upon the demand of any officer or agent authorized to enforce the laws of the State.

(d) The fee for a commercial marine dealer license is \$100 and the duplicate license fee is \$10.

(e) Every holder of a commercial marine dealer license shall comply with the reporting requirements of section 13-74-46.

(f) For purposes of this section, "market outlet" means a location where marine life is sold or offered for sale. A market outlet can be a physical location such as a retail market or restaurant or an online location such as a website specifically designed to facilitate the sale of marine life. [Eff and comp ] (Auth: HRS §189-10) (Imp: HRS §189-10)

**§13-74-46 Commercial marine dealer report. (a)**

Every commercial marine dealer shall submit to the department a report of all marine life obtained, purchased, transferred, exchanged, or sold during a weekly reporting period, which begin on Sundays and end on the following Saturdays. A report shall be submitted to the department by the Tuesday following the end of each weekly reporting period. Reports shall contain the following information:

- (1) The name, address, and telephone number of the commercial marine dealer;



- (2) The time period for which the report is being submitted;
  - (3) The species, numbers, weights, and values of each of the varieties of marine life landed in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;
  - (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
  - (5) Other information as required on forms provided by, or as directed in writing by, the department.
- (b) Reports shall be submitted to the department weekly." [Eff 1/7/18; comp 8/27/21; comp §189-10) (Imp: HRS §189-10)

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 13-74, 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 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.

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

APPROVED AS TO FORM:



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Deputy Attorney General

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 74

LICENSE AND PERMIT PROVISIONS AND FEES  
FOR FISHING, FISH, AND FISH PRODUCTS

Subchapter 1 General Provisions

- §13-74-1 Definitions
- §13-74-2 General license and permit conditions
- §13-74-3 Suspension, revocation, and non-issuance  
of licenses and permits, generally
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Subchapter 2 Recreational Fishing

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license
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- §13-74-20 Commercial marine license
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Subchapter 4 Other Licenses and Permits

§13-74-1

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§13-74-46 Commercial marine dealer report

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§13-74-1 Definitions.** As used in this chapter, unless otherwise provided:

"Aquatic life" means any type of species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof.

"Baitfish" means any of the species listed in section 13-74-22.

"Baitfishing report" means a monthly report that is furnished to the department with respect to any baitfish taken.

"Bottomfish fishing activity" means those fishing activities associated with the taking of bottomfish while on a vessel.

"Catch report" means a monthly report that every commercial marine licensee shall furnish to the department with respect to the marine life taken.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer

of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Commercial marine license" means any license issued to take marine life within or outside the State for commercial purpose.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 189-2, HRS.

"Commercial marine vessel license" means a license issued to an individual for a specific vessel that allows all crew on board the vessel to take marine life within or outside the State for commercial purpose without requiring each crew member to possess an individual commercial marine license.

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

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

"Fishing", "fishing activities", or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear that is designed to catch, take, or harvest aquatic life, by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be caught, taken, or harvested, is deemed to be fishing.

"Freshwater game fishes" means those introduced freshwater fishes as listed in section 13-99-2.

"Freshwater game fishing license" means a license issued to take freshwater game fishes.

"License period" means the period of time during which the license is or was valid.

"Licensee" means any person who has been issued a license pursuant to this chapter.

"Main Hawaiian islands" means those islands, reefs, and shoals, as well as their respective

appurtenant reefs and territorial waters of the Hawaiian Islands chain beginning and including the island of Ni`ihau to and including the island of Hawai`i.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Nonresident" means any individual who is not a resident of the State of Hawai`i.

"Permittee" means any person who has been issued a permit pursuant to this chapter.

"Person" means an individual, partnership, firm, company, corporation, association, or other entity.

"Qualified aquaculturist" means a person, or association of persons, actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities.

"Resident" means an individual that has established the individual's primary residence and worked in the State continuously for a period of twelve months or longer immediately prior to applying for or obtaining a license or permit, or has filed or paid the individual's State income taxes for the previous tax period, or has established domicile in the State. Domicile may be established by providing documentation including a valid Hawai`i driver's license or identification card, a valid school identification card, or any other official document issued to the individual within the previous thirty days from a government agency, financial institution, insurance company, or utility company.

"Trip" means any bout of fishing activity occurring in state marine waters in the course of a one way or round trip, and generally includes when a vessel has left port or shore until it puts into port or goes ashore, even if not to the point of origin. [Eff 8/12/93; am 10/18/10; comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5,

188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6)

**§13-74-2 General license and permit conditions.**

Except as otherwise provided:

- (1) All licenses and permits issued pursuant to this chapter are non-refundable and non-transferable and are valid for not longer than one year from the date of issuance. A duplicate license or permit may be issued upon affidavit that the original has been lost or destroyed, and upon payment of a duplicate license fee; provided that the duplicate license or permit shall expire on the same date as when the original license or permit would have expired;
- (2) A licensee or permittee shall show the license or permit and confirming identification upon the demand of any officer authorized to enforce the fishing laws of the State. No person shall refuse any such officer the examination of the license or permit and confirming identification, or inspection of any bag or container of any kind that could reasonably be used to carry any aquatic life or any vehicle or conveyance used to transport any aquatic life if such officer reasonably believes that the person is, or recently has been, engaged in fishing activities. Failure or refusal to show the license or permit and confirming identification or examination and search of any bag, container, vehicle, or conveyance is prima facie evidence of a violation of this chapter and sufficient cause for the immediate revocation of the license or permit by the department;
- (3) No licensee or permittee shall allow any other person to carry, display, or use the license or permit, except if the license or

- permit is issued for a vessel;
- (4) The department or its agents may issue licenses and permits as authorized by law, and with such conditions necessary to manage, protect, and conserve aquatic life;
  - (5) Should a monthly report be required by any license or permit, such report shall be rendered to the department as a true and correct statement of such information the department may require, on or before the tenth day of the following month in which the aquatic resources were taken or purchased, except for the Kona crab and lobster closed season sales license issued pursuant to section 13-74-41 whose report shall be rendered five days after the end of each of the closed season months on forms either furnished by, or approved by the department;
  - (6) Should a trip report be required as a condition of any license or permit, the report shall be timely submitted to the department as a true and correct statement of such information the department may require, on or before the fifth day following the last day of each trip in which aquatic life was landed. A trip report includes such information but is not limited to: start and end dates of the trip, locations fished, hours spent fishing at each location; numbers, kinds and weights of aquatic life caught, released, or lost to predators; and
  - (7) Any information submitted to the department as required under this section or chapters 187A, 188, and 189, HRS, is confidential and shall not be disclosed, except when required under court order or by the state attorney general's office subpoena, or with the prior written consent of the person submitting the information, or under cooperative agreements with United States government agencies for



the exchange and use of the information specifically to manage aquatic resources. The department may establish procedures to preserve the confidentiality of submitted information, except that the department may release or make public information in the aggregate or summary form that does not directly or indirectly disclose the identity of any person who submits information. [Eff 8/12/93; am 1/15/99; am 10/18/10; comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§187A-5, 187A-5.5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10) (Imp: HRS §§187A-2, 187A-5, 187A-12.4, 187A-15, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10)

**§13-74-3 Suspension, revocation, and non-issuance of licenses and permits, generally.** Except as may be otherwise provided, the department may:

- (1) Suspend any and all licenses and permits issued pursuant to this chapter when such action is necessary for the protection and conservation of the aquatic life;
- (2) Revoke any license or permit issued pursuant to this chapter for any infraction of the terms and conditions of the license or permit and any person whose license or permit was revoked shall not be eligible to be issued another license or permit until the expiration of one year from the date of revocation, unless another time period is specified;
- (3) In any proceeding for the revocation of any license or permit issued pursuant to this chapter, the licensee or permittee shall be given notice and opportunity for hearing in conformity with chapter 91, HRS. Upon revoking the license or permit, the

department may specify a period of time during which the licensee or permittee shall not be eligible to be issued another license; provided that the period shall not exceed one year from the date of revocation; and

- (4) Refuse to issue any license or permit to a person who is not legally admitted to the United States, who does not provide proper identification, who has unresolved violations of any license or permit issued pursuant to this chapter, or for other just cause. Should the department refuse to issue any license or permit, the department shall give the person notice and an opportunity for hearing in accordance with chapter 91, HRS. [Eff 8/12/93; am 1/15/99; comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 189-2, 189-5, 189-6) (Imp: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 189-2, 189-3, 189-5, 189-6)

**§13-74-4 Penalties, generally.** (a) Unless otherwise provided, any person violating any provision of this chapter, or the terms and conditions of any license or permit issued pursuant to this chapter, is subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by sections 187A-13, 188-70, and 189-4, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the State. [Eff 8/12/93; am 1/15/99; comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5,

187A-12.5, 187A-13, 188-45, 188-50, 188-53, 189-2, 189-6)

**§13-74-4.5 Asset forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or any of the terms and conditions of any license or permit issued pursuant to this chapter may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp 5/2/24] (Auth: HRS §§187A-5, 187A-12.5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §199-7, ch. 712A)

## SUBCHAPTER 2

### RECREATIONAL FISHING

**§13-74-10 Freshwater game fishing license.** (a) No person shall fish, take, or catch any introduced freshwater game fish without first obtaining a freshwater game fishing license, provided that children under nine years of age may fish without a license when accompanied by a licensed adult.

(b) Freshwater game fishing licenses shall require the person's name, address, domicile, or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes.

(c) The fee for the freshwater game fishing license is:

- (1) Minors under fifteen years of age, \$3;
- (2) Residents fifteen years of age, up to, but not including, sixty-five years of age, \$5;
- (3) Persons sixty-five years of age and older, free;
- (4) Persons not qualifying under paragraph (1), (2), or (3) but over fifteen years of age,

\$25, except that:

- (A) Members of the armed forces of the United States on active duty in the State whether qualifying as a resident or not, and their spouses and children fifteen years of age and over, \$5;
  - (B) Seven-day tourist license which is valid for only seven days from the date of issue, \$10; and
  - (C) Tourist license which is valid for only thirty days from the date of issue, \$20; and
- (5) Duplicate license, \$1. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§187A-5, 188-50) (Imp: HRS §§187A-5, 188-50)

**§13-74-11 Nonresident recreational marine fishing license.** (a) It is unlawful for any nonresident of the State who has attained the age of fifteen, except members of the armed forces of the United States on active duty in the State and their spouses and minor children, to fish for, take, or catch any marine life for noncommercial or recreational purposes without first obtaining a nonresident recreational marine fishing license.

(b) Licenses shall require the person's name, address, date of birth, height, weight, color of hair and eyes, and such other information as the department may require.

(c) The fee for the nonresident recreational marine fishing license is:

- (1) For a one-day fishing license, \$20;
- (2) For a seven-day fishing license, \$40; and
- (3) For an annual fishing license, \$70.

(d) Any person violating this section is subject to administrative penalties as provided by section 187A-12.5, HRS. [Eff and comp 5/2/24] (Auth: HRS §188-72) (Imp: HRS §§187A-12.5, 188-72)

SUBCHAPTER 3

COMMERCIAL FISHING

**§13-74-20 Commercial marine license.** (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons taking marine life for commercial purposes aboard a validly-licensed vessel.

(b) Any person providing charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons providing charter services for the taking of marine life aboard a validly-licensed vessel.

(c) Commercial marine licenses shall require the person's name, address, age, place of birth, residency, height, weight, color of hair and eyes, citizenship, and such other information as the department may require. The department may require an applicant for a commercial marine license to show proof of identity prior to issuance or renewal of a license.

(d) The fee for the issuance or renewal of a commercial marine license is:

- (1) \$100 for residents; and
- (2) \$250 for all other persons.

The fee for a duplicate license is \$10.

(e) No person may:

- (1) Renew a commercial marine license more than two months prior to its expiration date; or

§13-74-20

- (2) Be issued more than one commercial marine license at any one time; provided that a person may hold a commercial marine license simultaneously with commercial marine vessel licenses or other licenses issued pursuant to this chapter.

(f) Commercial marine licensees shall submit reports of their fishing activity. Such reports shall be submitted to the department monthly pursuant to section 13-74-2(5); provided that persons taking bottomfish as defined in chapter 13-94, in the main Hawaiian islands, shall, in addition to their monthly report for species other than bottomfish, submit trip reports of their bottomfish fishing activity pursuant to section 13-74-2(6). Monthly and trip reports are subject to section 13-74-2, and sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law. [Eff 8/12/93; am 1/15/99; am 10/18/10; am 1/7/18; am and comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

**§13-74-21 REPEALED.** [R 5/2/24]

**§13-74-22 Bait license.** (a) The department may issue to commercial marine licensees a license to take the following baitfishes for which an open season is declared:

- (1) 'Iao (*Atherinomorus insularum*);
- (2) Marquesan sardine (*Sardinella marquensis*);
- (3) Nehu (*Encrasicholina purpurea*);
- (4) Piha (*Spratelloides delicatulus*);
- (5) "Tabai" (*Mollienesia* spp.);
- (6) Threadfin shad (*Dorosoma petenense*); and
- (7) Gold-spot herring (*Herklotsichthys quadrimaculatus*).

(b) Licenses for taking baitfishes other than nehu shall be issued for fishing operations where the

fish caught are landed in the State, and where no baitfish caught are sold or transferred except for bait purposes.

(c) Licenses for taking nehu shall be issued only to persons employed on live-bait tuna boats, and only if their principal means of livelihood is derived from tuna fishing and the sale of tuna, where the fish caught are landed in the State, and the nehu is not sold to others.

(d) A separate license is required for each fishing vessel or independent fishing operation, regardless of whether several vessels or operations are owned or conducted by the same person, and shall be carried aboard each vessel or otherwise be readily available for inspection at all times.

(e) The fee for the bait license is \$100, and the duplicate license fee is \$10.

(f) Each person issued a bait license shall, in addition to monthly catch reports pursuant to section 13-74-20, submit baitfishing reports to the department. The baitfishing reports shall be submitted monthly in a form and manner provided by the department. The catch reports and baitfishing reports are subject to section 13-74-2; sections 189-3 and 189-3.5, HRS; and as may be otherwise provided by rule or law. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§187A-5, 188-45) (Imp: §§187A-5, 188-45)

Historical note: §13-74-22 is based substantially upon chapter 13-72. [Eff 5/26/81; am 1/25/82; R 8/12/93]

**13-74-23 Commercial marine vessel license.** (a) The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial marine vessel license to any qualified individual.

- (b) A qualified individual is anyone who:
- (1) Possesses a valid commercial marine license;
  - (2) Is at least eighteen years old;

- (3) Provides proof of identify; and
- (4) Does not have any unmet child support obligations pursuant to section 189-2, HRS.

(c) Any qualified individual applying for a commercial marine vessel license shall file an application on an approved application form that is available from the department. The application shall be completed in its entirety. Failure to provide a completed application or providing false or misleading information on the application may result in delay or denial of the application.

(d) A commercial marine vessel license is valid from the date of issuance and shall expire on the expiration date of the licensee's commercial marine license. A commercial marine vessel license is valid only for a specific vessel and is nontransferable. A qualified individual may obtain and possess more than one commercial marine vessel license at a time.

(e) The fee for the issuance or renewal of a commercial marine vessel license is:

- (1) \$100 for any vessel less than twenty-two feet in length that is not used for longline fishing;
- (2) \$200 for any vessel twenty-two feet in length or greater that is not used for longline fishing; and
- (3) \$1,500 for any vessel used for longline fishing, as defined in section 189-2.5, HRS.

The fee for a duplicate license is \$10.

(f) If a commercial marine vessel license is issued for a longline vessel, the commercial marine vessel licensee shall file an annual report with the department that contains the following information about all crew members who worked aboard the longline vessel during the license period:

- (1) Identity;
- (2) Nationality;
- (3) Arrival date in Hawai'i
- (4) Departure date; and
- (5) Any other information the department may require.

The longline annual report shall be submitted to the



department within thirty days of the end of the license period.

(g) If a commercial marine vessel license is issued for a vessel providing charter services for the taking of marine life, the license shall satisfy the commercial marine license requirement for all crew members. The commercial marine vessel license does not exempt charter fishing vessel passengers or customers from the requirement to have a nonresident recreational marine fishing license or any other license required by law. For purposes of this section, a "passenger" is any individual on board a vessel who is not a member of the vessel's crew.

(h) If a vessel for which a commercial marine vessel license is obtained is lost, destroyed, stolen, sold, transferred, or otherwise no longer in the possession or control of the licensee, the licensee shall immediately notify the department, and the license shall be terminated.

(i) The commercial marine vessel license shall be kept aboard the vessel at all times while participating in commercial fishing activities and shall be made available for inspection upon demand.

(j) Persons issued a commercial marine vessel license shall submit reports of the vessel's fishing activity. Such reports shall be submitted to the department monthly pursuant to section 13-74-2(5); provided that persons taking bottomfish, as defined in chapter 13-94, in the main Hawaiian islands shall, in addition to their monthly reports for species other than bottomfish, submit trip reports of their bottomfishing activity pursuant to section 13-74-2(6). Monthly and trip reports are subject to section 13-74-2; sections 189-3 and 189-3.5, HRS; and as may be otherwise provided by law. [Eff and comp 5/2/24]  
(Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-)3.5

SUBCHAPTER 4

OTHER LICENSES AND PERMITS

**§13-74-40 Mullet pond operator and closed season sales license.** (a) The department may issue to any owner or operator of a fish pond a license to lawfully catch young mullet, known as pua, during the closed season, for the purpose of stocking the owner's or operator's pond, and provided that any owner or operator of a fish pond and any dealer may lawfully sell such pond raised mullet during the closed season with such a license granting this privilege.

(b) A separate license is required for each fish pond or market operation, regardless of whether several fish pond or market operations from which the mullet are sold are owned or operated by the same person, and shall be readily available for inspection at all times.

(c) The fee for the mullet pond operator and closed season sales license is \$100, and the duplicate license fee is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp 5/2/24] (Auth: HRS §188-44) (Imp: HRS §188-44)

**§13-74-41 Kona crab and lobster closed season sales license.** (a) The department may issue a license to a commercial marine dealer, or any restaurant, to sell or serve during the closed season, Kona crabs or lobsters lawfully caught during the open season.

(b) Each licensee shall submit a report to the department within five days after the end of each of the closed season months. The report shall list the amount of remaining Kona crab and lobster in the licensee's inventory as of the end of the month.

(c) The fee for the Kona crab and lobster closed season sales license is \$100, and the duplicate license fee is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp 5/2/24] (Auth: HRS §188-57)

(Imp: HRS §188-57)

**§13-74-42 Special marine animal or product possession and sale license.** (a) The department may issue a license to an importer, wholesaler, retailer, or restaurant to possess, sell, or offer for sale, any fish, shellfish, crustacean, or other marine animal, or any product made from such marine animals taken outside of the waters of the State, when such taking, possession, or sale of the same species is restricted if taken within the waters of the State.

(b) Licenses shall require the business' name, address, telephone number, name of applicant, and any other information the department may require.

(c) Each licensee shall furnish to the department monthly reports that include the following information:

- (1) If the licensee is an importer:
  - (A) Species imported, source, quantity, and arrival date; and
  - (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (2) If the licensee is a wholesaler:
  - (A) Source, quantity, and date purchased; and
  - (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (3) If the licensee is a retailer or restaurant:
  - (A) Source and date of purchase; and
  - (B) Species and quantity sold; and
- (4) Any other such information the department may require.

(d) The fee for the special marine animal or product possession and sale license is \$100, and the duplicate license fee is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp 5/2/24]  
(Auth: HRS §189-6) (Imp: HRS §189-6)

Historical note: §13-74-42 is based substantially upon chapter 13-71. [Eff 5/26/81; R 8/12/93]

**§13-74-43 Aquaculture license.** (a) After review of a written application, the department may issue to any qualified aquaculturist a license to fish for, rear, possess, or sell any aquatic life whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit; provided that the qualified aquaculturist rears or reared the aquatic life in an aquaculture facility for commercial purpose. To qualify for a license a qualified aquaculturist must satisfy the department that the qualified aquaculturist is able to maintain aquatic life or live rock alive and in good health in an aquaculture facility at all times in accordance with industry-wide standards.

(b) The licensee shall make and issue a receipt whenever a transaction concerning regulated aquatic life occurs. The receipt shall be a written record of the transaction and shall include:

- (1) The transaction date;
- (2) The name and address of the licensee, the name of the person issuing the receipt, and the name and address of the person to whom the receipt is issued, except that the name and address of the person to whom the receipt is issued are not required if the transaction is with a person who will not resell the regulated aquatic life;
- (3) The name, weight, number or other appropriate measure of quantity, and value of all regulated aquatic life involved in the transaction; and
- (4) Any other information the department may require.

(c) The licensee shall keep all receipts on file and be able to present such receipts for inspection upon demand of any officer authorized to enforce the laws of the State. The receipts shall be kept for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The

department may approve the use of documents other than the receipts as written records of the transaction.

(d) The licensee shall submit to the department a summary report on or before July 31<sup>st</sup> of each year, covering the previous twelve-month period between July 1<sup>st</sup> to June 30<sup>th</sup>. The report shall provide an accounting of the regulated aquatic life received, bought, sold, transferred, or exchanged. The accounting shall include the items involved in a transaction, the sum of the weight, number or other appropriate unit of quantity, and value, along with any other information the department may require.

(e) Licensees that rear live rocks shall only use rocks for producing live rocks obtained from legal sources such as quarries or dredging operations. Harvesting, collecting, or otherwise obtaining live rocks from the wild is strictly prohibited.

(f) Unless authorized in writing by the department, licensees shall not:

- (1) Release cultured aquatic life or live rock into state waters;
- (2) Fish for, in state waters, any regulated aquatic life or live rock;
- (3) Fish in areas where fishing is restricted by law; or
- (4) Use gear that the department has declared illegal except for small meshed nets, provided the net is not a small meshed thrownet.

(g) The department may restrict or prohibit the rearing of any aquatic life as authorized by this section, such as those species whose entry into or possession in the State is restricted or prohibited pursuant to the rules of the department of agriculture, those species that the state or federal governments may list as threatened or endangered, or any aquatic life the department may determine to be unsuitable for commercial rearing in the State or otherwise potentially detrimental to living aquatic resources in the State.

(h) The department may require licensees:

- (1) Who fish in the wild for regulated aquatic

life to report such catches and to include in the report the species, numbers, size, fishing location, amount of fishing effort, and any other information for the purpose of the license. The regulated aquatic life taken from the wild may only be used for stocking into the aquaculture facility as juveniles or used as adults to provide broodstock material. The licensee may not sell or offer for sale any regulated aquatic life taken from the wild that is less than the minimum size as specified by law;

- (2) To obtain a Conservation District Use Permit pursuant to chapter 13-53, Hawaii Administrative Rules, and a Right of Entry Permit pursuant to chapter 171, HRS, in addition to any other requirement of law;
- (3) To provide a list of names of any person that will buy or obtain any regulated aquatic life that was reared in the licensee's aquaculture facility. Any changes to the list shall be in writing; and
- (4) To submit additional monthly reports, trip reports, or other reports as required by the department.

(i) A separate license shall be obtained for each aquaculture facility that rears, possesses, or sells regulated aquatic life, even if one person owns or operates several aquaculture facilities. A copy of the license shall be available for inspection upon the demand of any officer authorized to enforce the laws of the State, including whenever the regulated aquatic life are fished for, delivered, transported, or sold. The license shall be kept at the facility for immediate inspection.

(j) For purposes of this section:

"Aquaculture facility" means any farm, ranch, hatchery, pond, workplace, or place of business that is designed or intended for the rearing, breeding, or culturing of aquatic life or live rock in a controlled or managed salt, brackish, or freshwater environment.

"Regulated aquatic life" means any aquatic life

or live rock whose fishing for, possession, or sale is prohibited by a closed season, minimum size, or bag limit as specified in subtitle 5 of title 12, HRS, or administrative rules.

(k) The license fee is \$100, and the duplicate license fee is \$10. [Eff 8/8/96; comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§187A-3.5, 187A-5, 188-44, 188-68) (Imp: HRS §§187A-3.5, 187A-5, 188-44, 188-68)

**§13-74-44 License to sell reared species. (a)**

The department may issue to any person a license to possess, sell, or offer for sale any aquatic life whose possession or sale is prohibited by a closed season, minimum size, or bag limit; provided that the aquatic life was reared in a licensed aquaculture facility.

(b) The licensee shall keep a receipt issued by the licensed aquaculture facility when receiving or buying the regulated aquatic life.

(c) The licensee shall issue a receipt to the person to whom the regulated aquatic life is sold or transferred. The receipt shall be a written record of the transaction and shall include:

- (1) The transaction date;
- (2) The names and addresses of the licensee, the person issuing the receipt, and the person to whom the receipt is issued, except that the name and address of the person to whom the receipt is issued are not required if the transaction is with a person that will not resell the regulated aquatic life;
- (3) The name, weight, number or other appropriate measure of quantity, and value of all regulated aquatic life involved in the transaction; and
- (4) Any other information the department may require.

(d) The licensee shall keep on file and be able to present for inspection upon demand of any officer

authorized to enforce the laws of the State, a copy of all receipts for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction.

(e) A separate license shall be obtained for each market outlet that sells or offers for sale the regulated aquatic life, even if the same person owns or operates several outlets. The license shall be kept at the market outlet for immediate inspection upon demand of any officer authorized to enforce the laws of the State.

(f) The department may require submittal of monthly reports, pursuant to the purposes of this section.

(g) For the purposes of this section:

"Licensed aquaculture facility" means any aquaculture facility licensed pursuant to section 13-74-43.

"Regulated aquatic life" means any aquatic life or live rock whose fishing for, possession, or sale is prohibited by a closed season, minimum size, or bag limit as specified in subtitle 5 of title 12 or administrative rules.

(h) The fee for the license \$200. The license is valid for not longer than two years, and the duplicate license fee is \$10. [Eff 8/8/96; am 5/22/00; comp 8/27/21; am and comp 5/2/24] (Auth: HRS §§187A-3.5, 187A-5) (Imp: HRS §§187A- 3.5, 187A-5)

**§13-74-45 Commercial marine dealer license.** (a) No person shall sell, offer for sale, exchange, or act as an agent in the sale, exchange, or transfer of marine life obtained directly from a commercial marine licensee, unless the person possesses a valid commercial marine dealer license; provided that a commercial marine licensee who sells or exchanges self-caught marine life at retail and complies with



the reporting requirements of section 13-74-2 shall not be required to hold a commercial marine dealer license.

(b) A commercial marine dealer licensee shall not sell or offer for sale, purchase or attempt to purchase, exchange, or act as an agent in the sale, exchange, or transfer of any marine life taken within the jurisdiction of the State for commercial purpose that is obtained from any person who does not have a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for commercial purpose.

(c) Each market outlet where marine life that is obtained directly from a commercial marine licensee is sold for commercial purposes shall have a separate commercial marine dealer license, even if one person owns or operates several market outlets. A copy of the license shall be kept at the market outlet and shall be made available for immediate inspection upon the demand of any officer or agent authorized to enforce the laws of the State.

(d) The fee for a commercial marine dealer license is \$100 and the duplicate license fee is \$10.

(e) Every holder of a commercial marine dealer license shall comply with the reporting requirements of section 13-74-46.

(f) For purposes of this section, "market outlet" means a location where marine life is sold or offered for sale. A market outlet can be a physical location such as a retail market or restaurant or an online location such as a website specifically designed to facilitate the sale of marine life. [Eff and comp 5/2/24] (Auth: HRS §189-10) (Imp: HRS §189-10)

**§13-74-46 Commercial marine dealer report.** (a) Every commercial marine dealer shall submit to the department a report of all marine life obtained, purchased, transferred, exchanged, or sold during a

weekly reporting period, which begin on Sundays and end on the following Saturdays. A report shall be submitted to the department by the Tuesday following the end of each weekly reporting period. Reports shall contain the following information:

- (1) The name, address, and telephone number of the commercial marine dealer;
- (2) The time period for which the report is being submitted;
- (3) The species, numbers, weights, and values of each of the varieties of marine life landed in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;
- (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
- (5) Other information as required on forms provided by, or as directed in writing by, the department.

(b) Reports shall be submitted to the department weekly. [Eff 1/7/18; comp 8/27/21; comp 5/2/24]  
(Auth: HRS §189-10) (Imp: HRS §189-10)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapter 13-74, Hawaii Administrative Rules, on the Summary Page dated January 12, 2024, was adopted on January 12, 2024, following two hybrid public hearings held on August 16 and 17, 2023, after public notice was given in The Garden Island and West Hawai'i Today on July 15, 2023 and in the Hawai'i Tribune Herald and Honolulu Star-Advertiser on July 16, 2023, and one public hearing on September 27, 2023, after public notice was given in the Honolulu Star-Advertiser on August 27, 2023.

This amendment and compilation of chapter 13-74 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ DAWN N.S. CHANG

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

APPROVED:

/s/ JOSH GREEN, M.D.

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JOSH GREEN, M.D.  
Governor,  
State of Hawai'i

APPROVED AS TO FORM:

/s/ MELISSA D. GOLDMAN

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MELISSA D. GOLDMAN  
Deputy Attorney General

4/22/24  
Dated: \_\_\_\_\_

4/22/24

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Filed

**Ordinance No. 1134 (2022), An Ordinance to Amend Chapter 8, Article 12, Kauai County Code 1987, Relating to Constraint Districts**

Sec. 8-12.5 Sea Level Rise District (S-SLR)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 12,  
KAUAI COUNTY CODE 1987, AS AMENDED,  
RELATING TO CONSTRAINT DISTRICT(S)**

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(County of Kaua'i Planning Department, Applicant) (ZA-2022-12)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Kaua'i County Council (Council) finds that rapid warming of the atmosphere and oceans is increasing the sea level rise that threatens our natural and built environments.

The Council also finds that the State of Hawai'i Climate Change and Mitigation and Adaptation Commission adopted a Sea Level Rise Vulnerability and Adaptation Report. The Report with its corresponding Hawai'i Sea Level Rise Viewer, provides hazard and vulnerability data and maps that can be used for land management decisions.

The Council also finds that the Hawai'i Sea Level Rise Viewer models three (3) specific sea level rise hazards associated to increase within this century: chronic coastal erosion, annual high wave run up, and passive flooding.

With data generated through the studies and analysis for the State of Hawai'i Sea Level Rise Vulnerability and Adaptation Report, the County of Kaua'i can generate its own sea level rise spatial and depth analysis for annual high wave run up and passive flooding generated from sea level rise.

The Council also finds that the Comprehensive Zoning Ordinance has a relatively outdated and redundant Constraint District, the Constraint Shoreline District (S-SH). This Constraint District is now covered by much more comprehensive rules and regulations with the Special Management Area Rules and Regulations.

The Council also finds that Article 27 of the Comprehensive Zoning Ordinance establishes specific shoreline setback requirements to address chronic coastal erosion as well as the added impact of sea level rise on shoreline erosion. Any additional regulations concerning sea level rise impacts on coastal erosion should be done so within Article 27 of the Comprehensive Zoning Ordinance.

The purpose of this Ordinance is to amend the Comprehensive Zoning Ordinance's Constraint Shoreline District (S-SH) to become the Constraint Sea Level Rise District to address sea level rise impacts on annual high wave run up and passive flooding projected to occur within this century by a County of Kaua'i Sea Level Rise Constraint District Viewer.

SECTION 2. Chapter 8, Article 12, Kaua'i County Code 1987, as amended, is hereby amended by amending Sec. 8-12.5, to read as follows:

**"[Sec. 8-12.5 Shore Districts (S-SH).**

(a) Purpose. To regulate development or alterations to shore and water areas which have unique physical and ecological conditions in order to protect and maintain physical, biologic and scenic resources of particular value to the public.

(b) Lands Included.

(1) The Shore District includes the greater of the following shoreline areas (land and water):

(A) That area where the Planning Director determines that there is significant interrelationship between the physical, biologic, or ecologic forms or systems characteristic of the shore area;

(B) From the low water mark to forty (40) feet inland from the upper reaches of the wash of waves other than storm or tidal waves (or twenty (20) feet in those cases as are provided for by the rules of the State Land Use Commission implementing Chapter 205, H.R.S.).

(2) Within five (5) years after September 1, 1972 the Planning Commission shall prepare a Shoreline Special Treatment Zone Plan. The plan upon adoption by the Planning Commission shall determine the boundaries of the Shore District.

(c) Requirements for Development Within the Shore District. No Zoning, Building or Use Permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Shore District be permitted, unless the applicant establishes conformity with the requirements of this Section.

(1) Applicants for permits shall furnish an Information Report prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. The Planning Director shall determine the adequacy of the report and may require the submission of further information where necessary. The report shall provide information regarding the existing ocean conditions and regarding probable effects of the proposed structures, development, or alterations, as follows:

(A) With respect to existing conditions, the report shall describe the configuration of the shore; the nature, magnitude, and periodicity of Shore District forces such as wind, waves and currents, as they affect the Shore District; the origin, nature and volume of materials composing the shoreline; the physical and biologic characteristics and the rate of Shore District change over time under both natural and proposed artificial conditions.

(B) With respect to probable effects of the proposed construction, the applicant shall define a design wave (usually the mean height and period of the highest one-third (1/3) of the waves of a given wave group, including storm surge and tsunami), the design water level of the ocean, the foundation conditions, and the construction materials, and shall state how the proposed design and construction operations will minimize disruption of the natural system.

(C) With respect to assessing the quality of the proposed construction, the applicant shall describe alternatives to the proposed construction that were considered and why each was rejected, in terms of environmental quality and economic feasibility, including as one alternative the choice of no construction.

(2) Before a permit may be granted, the applicant shall establish that the proposed alteration, construction or activity will not cause significant harm to:

(A) The water quality of the ocean, including, but not limited to, its clarity, temperature, color, taste and odor;

(B) Fish and aquatic habitats;

(C) The natural beauty of the area;

(D) Navigation, safety or health; or

(E) Would not substantially interfere with public use of the ocean waters or underlying lands; and

(F) That other facilities are unavailable to the applicant.

(3) Marinas and harbors shall not be permitted in the following locations:

(A) Areas where, due to the amount of unconsolidated materials, wave and current energy, shoreline configuration, and other pertinent factors, beach erosion is likely to occur;

(B) Unstable locations;

(C) Areas designated by the Planning Commission as being of unique scenic beauty which should be retained in their natural condition;

(D) Areas where there is no demonstrable public need for a new marina or harbor;

(E) In areas so that the standards established in Subsection (c)(2) are violated;

(F) Use Districts where marinas and harbors are not permitted uses.

(4) Marinas and harbors, when permitted, shall be located in the following areas unless the Planning Commission determines that the site would be inconsistent with the objectives of this Chapter or the applicant can demonstrate that such an area is unavailable and that the alternative site chosen will be consistent with the purposes of this Chapter.

(A) In deeper water in order to minimize the need for dredging;

(B) In natural inlets to avoid use of breakwaters;

(C) In an area designated for marinas and harbors on the General Plan.

(5) Design and Construction Standards.

(A) Floating piers or piers on pilings shall be used to provide access to boats, rather than dredging, whenever possible.

(B) Where dredging is permitted, spoil material shall not be deposited in the water.

(C) Where a barrier wall is required in connection with a marina, or harbor, it shall be carried deep enough below the bottom to prevent movement of back-fill materials into the water.



(D) Materials used to stabilize the bottom of the marina or harbor for pier structures shall be chemically inert sand, gravel, or similar substances.

(6) Shore Facilities. Restrooms, pump-out facilities for boat sewage receptacles, and trash receptacles for other boat wastes shall be provided at a marina or harbor.

(7) Monitoring Information Requirements. The owner or operator of a marina or harbor may be required to furnish information concerning water quality, current patterns and intensities, shore alterations, and any other conditions which may be altered by the construction of the marina or harbor for a reasonable period after completion of the facility.

(8) Location of Shoreline Protective Structures. To prevent local beach loss, shoreline protective structures shall be used only where protection of the back-shore is of greater importance than beach preservation, or where less disruptive methods have failed. The following design and construction standards shall apply:

(A) Sloping permeable revetments shall be used when barriers are permitted.

(B) Seawalls and bulkheads shall be permitted only when the applicant is able to demonstrate that revetments are not feasible and that the alternative structure will cause no undue beach erosion.

(C) Shoreline barriers shall not be constructed of unstable or soluble materials.

(9) There shall be no fill placed in the Shore District except at those locations where the fill is found to be beneficial to existing water quality or Shore District conditions.

(10) There shall be no dredging, removal or rearrangement of materials within the water or shore zone of the ocean. Dredging or excavation performed in the course of construction for which a permit has been approved under the terms of this Chapter shall be considered dredging or excavation for the purpose of this Section.

(d) Permits Required.

(1) A Class IV Zoning Permit is required for any construction, development, use or activity proposed to be carried out within forty (40) feet of the upper reaches of the wash of waves other than storm or tidal waves, or within the shoreline setback area as established by the State Land Use Commission pursuant to Chapter 205, H.R.S., whichever is the lesser. The Planning Commission shall issue a permit only if the requirements of both Chapter 205, H.R.S. and this Chapter have been met.

(2) A Class III or Class IV Zoning Permit, depending upon the requirements established for the underlying Use District in which the proposed construction, development, use or activity is located, is required for undertakings in the Shore District established by this Chapter located landward of the shoreline setback area defined in Subsection (d)(1). The Planning Director or Planning Commission shall issue a permit only if the requirements of this Chapter have been met.

(e) Modification of Requirements. The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Planning Director that the area in question should not have been included in the Shore District under the criteria established in Subsection (c)(1).]

**Sec. 8-12.5 Sea Level Rise District (S-SLR).**

(a) Purpose.

(1) To minimize the threat to public health and safety due to sea level rise that increases the impacts of annual high wave run up and passive flooding.

(2) To promote resilient planning and design.

(3) To minimize the expenditure of public money for costly flood control projects necessitated from sea level rise impacts.

(4) To minimize the need for rescue and relief efforts that are associated with sea level rise flooding and generally undertaken at the expense of the general public.

(5) To ensure that those who occupy areas that are projected to be impacted by sea level rise acknowledge and assume responsibility for their actions.

(b) General Provisions.

(1) Lands Included. All lands subject to annual high wave flooding and passive flooding impacts projected by the Kauai Sea Level Rise Constraint District Viewer (with 3.2 feet of sea level rise anticipated to occur within this century) and within the County of Kauai Sea Level Rise Constraint District (S-SLR).

(2) Compliance. No structure shall be constructed, located, extended, converted, or altered without full compliance with the terms of this Article or other applicable regulations.

(3) Other Laws and Regulations. All construction and improvements subject to this Article shall comply with other applicable laws and regulations, including but not limited to, the Flood Plain Management Ordinance, Building Code, Electrical Code, Plumbing Code, Subdivision Ordinance, Special Management Area Rules and Regulations, and Sediment and Erosion Control Ordinance. In case of a conflict between this Article and the requirements of any other Federal law, State law, or County ordinance, such as the Flood Plain Management Ordinance, the more restrictive requirements shall apply.

(4) Interpretation. In the interpretation and application of this Article, all provisions shall be:

- a. Considered as minimum requirements;
- b. Liberally construed in favor of the County; and
- c. Deemed neither to limit nor repeal any other requirement, power, or duty prescribed under Federal, State, or County statutes.

(5) Warning and Disclaimer of Liability. The degree of sea level rise protection required by this Article is considered reasonable for regulatory purposes and is based on scientific considerations. Larger floods and hazards can and will occur on occasions. Sea level rise flood elevations may be increased by human or natural causes. This Article does not imply that land outside the area of the Constraint Sea Level Rise District or uses permitted within such area will be free from damage. This Article shall not create liability on the part of the County of Kaua'i, any officer, or employee for any damages that result from reliance on this Article or any administrative decision lawfully made based on this Article.

(c) Definitions.

“Annual high wave run up” is the distance over which the maximum annually occurring significant wave height and associated peak period run-up and wash across the shoreline.

“Basement” means the portion of a building having its floor subgrade (below ground level) on all sides.

“Building footprint” shall mean all parts of a main building (excluding roof overhangs) that rest on the ground directly or indirectly, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks. This definition does not include vertical access, such as stairs or ramps.

“County” means the County of Kaua‘i.

“County Engineer” means the County Engineer of the County of Kaua‘i or his/her authorized representative.

“Flood” or “Flooding” means a general condition of partial or complete inundation of normally dry land areas from overflow of inland or marine water resulting from any source or the unusual and rapid accumulation of runoff or surface waters from any source.

“Kaua‘i Sea Level Rise Constraint District Viewer” is an online atlas in effect on \*\*\* and generated by data used in the creation of the Hawai‘i Sea Level Rise Vulnerability and Adaptation Report that was mandated by Act 83, Session Laws of Hawai‘i (SLH) 2014 and Act 32, SLH 2017. The Viewer provides visualizations depicting projections of future annual high wave run up and passive flooding hazards due to rising sea levels. The methodology and data were provided by the University of Hawai‘i School of Ocean and Earth Science and Technology (UH SOEST) through a collaborative project led by the University of Hawai‘i Sea Grant College Program (Hawai‘i Sea Grant) in partnership with DLNR and the State of Hawai‘i Office of Planning, and published under Anderson et al. 2018.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor, for the purposes of this Article, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

“Passive flooding” is flooding of low coastal lands due to sea level rise potentially from multiple sources, including but not limited to seawater flowing directly across the shoreline, backflow through storm drains, and rising groundwater tables.

“Planning Director” means the Planning Director of the Planning Department of the County of Kaua‘i.

“Sea level rise flood elevation (SLRFE)” the individual depth above existing grade per grid unit provided by the County of Kauai Sea Level Rise Constraint District Viewer for both the high wave run up hazard and the passive flooding hazard when either of those are associated with 3.2 feet of sea level rise occurring within this century.

“Structure”, for the purpose of the Sea Level Rise District (S-SLR), means a walled and roofed building and includes gas or liquid storage tanks that are principally above ground and includes manufactured homes such as mobile homes.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

“Substantial improvement” means any combination of repairs, reconstruction, improvements, or additions or other improvements to a structure over a ten (10) year period, where the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the first improvement during that ten (10) year period. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The cost of any substantial improvement, including the cost to repair damage to pre-damage condition, shall be reviewed and determined by the County Engineer or his/her authorized representative. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

(d) Design Standards.

(1) Anchoring. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) Elevation.

a. Residential Structures. All new construction and substantial improvements shall have the lowest floor (including basements) elevated at least two (2) feet above the highest sea level rise flood elevation (SLRFE) located within the respective building footprint. This additional two (2) feet shall be calculated from the top of the SLRFE to the bottom of the lowest horizontal structural member of the lowest floor, excluding pilings, columns, and vertical accesses.

Fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access, or storage in an area other than a basement shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvres, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

b. Nonresidential Structures. All new construction and substantial improvements shall elevate the lowest floor, including basement, at least one (1) foot above the highest sea level rise flood elevation located within the respective building footprint. This additional one (1) foot shall be calculated from top of the SLRFE to the bottom of the lowest horizontal structural member of lowest floor, excluding pilings, columns, and vertical accesses.

(3) Fill is prohibited for structural support.

(4) No machinery or equipment that service a building, such as furnaces, air conditioners, heat pumps, hot water heaters, washers, dryers, elevator lift equipment, electrical junction and circuit breaker boxes, and food freezers, are permitted below the respective SLRFE located within the respective space the machinery is proposed to be situated.

(5) All interior wall, floor, and ceiling materials located below the sea level rise flood elevations must be unfinished and resistant to flood damage. The design standards set forth in the American Society of Civil Engineers (ASCE) 24 Flood Resistant Design and Construction shall be followed.

(6) Front, Rear, and Side Setback Areas. The following may be located within the required setback areas:

a. Front, Rear, and Side Setback Areas: structures and improvements used for vertical access from grade to the elevated structure, such as stairs or ramps.

b. Rear and Side Yards: flood protection equipment, and structures housing mechanical equipment above the required SLRFE.

(7) All design standards shall conform, at a minimum, to the Kaua'i County Code's Floodplain Management Regulations (See Title V, Chapter 15, Article 1 Floodplain Management). Additionally, per the State Building Code Council, as of November 13, 2020 Kaua'i County is required to adopt the 2012 International Building Code Council and will be required to adopt the 2018 International Building Code in timeframes determined by the State Building Code Council. The 2012 International Building Code incorporates, by reference, that the ASCE section 24-05 Flood Resistant Design and Construction be followed. The 2018 International Building Code incorporates, by reference, that the American Society of Civil Engineers (ASCE) section 24-14 Flood Resistant Design and Construction be followed. The current versions of the IBC and ASCE Flood Resistant Design and Construction shall be followed and the more stringent criteria will comply where conflicts arise with the SLRFE.

(e) Nonconforming Structures.

Any nonconforming structure existing on the effective date of this ordinance may continue subject to the following conditions:

(1) Any repair, reconstruction, improvement, or addition to a nonconforming structure; if it is determined to be substantial improvement or repair of substantial damage, it shall comply with the applicable standards for new construction in the Constraint Sea Level Rise District. However, a repair, reconstruction, improvement, or addition to a nonconforming structure will not have to comply with the applicable standards for new construction if it meets one of the following criteria: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(2) Replacement or reconstruction of a destroyed or demolished nonconforming structure is considered new construction regardless of the actual work performed and shall comply with the applicable standards of this Article.

(3) All relocated structures shall comply with the standards of the Article.

(f) Determination of Exemption.

(1) Standards. A Determination of Exemption from the design standards of this Article may be issued by a joint determination of the County Engineer and the Planning Director where the applicant can demonstrate that the proposal will not increase sea level rise flood heights, create additional threats to public safety, create extraordinary public expense, create nuisances, or conflict with existing local laws or ordinances.

(2) Request for Determination of Exemption. A request for Determination of Exemption shall be submitted to the Planning Director and the County Engineer. The application shall be signed and stamped by a registered professional engineer or architect, and it shall include three (3) sets of documents with the following information as may be required by the Planning Director and the County Engineer.

a. Plans and specifications showing the site and location; dimensions of all property lines and topographic elevation of the lot; existing and proposed structures and improvements, fill, storage area; location and elevations of existing and proposed streets and utilities; relationship of the site to the location of the Sea Level Rise Constraint District, flood boundary; floodway; and the existing and proposed flood control measures and improvements.

b. Cross-sections and profile of the area and the regulatory SLRFE elevations and profile based on elevation reference marks on flood maps.

c. Flood study and drainage report in areas where study and report have not been reviewed and accepted by the County.

d. Description of surrounding properties and existing structures and uses and the effect of the regulatory flood on them caused by the determination of exemption.

e. An agreement, executed by the property owner, that a covenant will be inserted in the deed and other conveyance documents of the property and filed with the Bureau of Conveyances of the State of Hawai'i stating that the property is located in the Sea Level Rise Constraint District and is subject to flooding and flood damage; that a determination of exemption to construct a structure below the SLRFE may result in increased flood risks to life and property; that the property owners will not file any lawsuit or action against the County for costs or damages or any claim; that the property owners will indemnify and hold



harmless the County from liability when such loss, damage, injury, or death results due to the determination of exemption and flooding of the property; and that upon approval of the determination of exemption, the covenants shall be fully executed and proof of filing with the Bureau of Conveyances shall be submitted to the County Engineer prior to the issuance of a building permit.

f. Such other information as may be relevant and requested by the Planning Director and the County Engineer.”

SECTION 3. The Planning Department shall make the Kaua‘i Sea Level Rise Constraint District Viewer available on its County of Kaua‘i, Planning Department website.

SECTION 4. When revising, compiling, or printing this Ordinance for inclusion in the Kaua‘i County Code 1987, as amended, the designated adoption date of this Ordinance shall be substituted for the \*\*\* placeholder.

SECTION 5. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 6. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua‘i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 7. This Ordinance shall take effect upon approval.

Introduced by: /s/ MASON K. CHOCK  
(By Request)

DATE OF INTRODUCTION:

**August 3, 2022**

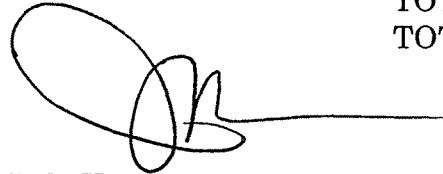
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2879, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on August 3, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i  
August 3, 2022




Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2879, Draft 1 which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on October 5, 2022, by the following vote:

FOR ADOPTION:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i  
October 5, 2022



Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i

ATTEST:

  
Arryl Kaneshiro  
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

October 6, 2022

Approved this 14<sup>th</sup> day of

October, 2022.



Derek S.K. Kawakami,  
Mayor  
County of Kaua'i

**Ordinance No. 23-3 Relating to Shoreline Setbacks**

Revised Ordinances of Honolulu (ROH) Chapter 26 Article 1: Shoreline Setbacks



**A BILL FOR AN ORDINANCE**

RELATING TO SHORELINE SETBACKS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to update ROH Chapter 26, relating to shoreline setbacks, to incorporate amendments made by Act 16, Session Laws of Hawaii 2020, to HRS Chapter 205A, the State Coastal Zone Management law, and to implement an erosion-rate-based shoreline setback formula.

SECTION 2. Chapter 26, Article 1, Revised Ordinances Honolulu 2021 ("Shoreline Setbacks"), is amended to read as follows:

**"ARTICLE 1: SHORELINE SETBACKS**

**§ 26-1.1 Authority.**

Pursuant to the authority conferred by HRS Chapter 205A, the standards and procedures contained in this chapter are hereby established and shall apply to all lands within the shoreline setback area of the city.

**§ 26-1.2 Purpose[;] and intent.**

- (a) It is a primary policy of the city to [protect]:
  - (1) Reduce exposure to coastal hazards and increase the resilience of the community;
  - (2) Protect and preserve the natural shoreline, coastal zone environments, and associated ecosystems, especially sandy beaches[; to protect], coastal dunes, wetlands, and reefs;
  - (3) Protect and preserve public pedestrian access laterally along the shoreline and to the sea; [and to]
  - (4) Maintain, protect, and preserve open space and coastal scenic resources [along the shoreline. It is also a secondary policy of the city to reduce hazards to property from coastal floods.]; and
  - (5) Prohibit shoreline hardening unless necessary for coastal restoration or where it would result in a clear public benefit.



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- (b) To carry out these policies and to comply with the mandate stated in HRS Chapter 205A, it is the specific purpose of this chapter to establish standards and ~~[to]~~ authorize the department of planning and permitting to adopt rules pursuant to HRS Chapter 91~~[-that]~~ which generally prohibit within the shoreline setback area any ~~[construction]~~ structure or activity ~~[which]~~ that may adversely affect beach processes, public access along the shoreline, or shoreline open space.
- (c) Finally, it is the purpose of this chapter to name the director of planning and permitting as the council's designee to exercise ~~[some of the]~~ certain powers and functions granted, and duties imposed, pursuant to HRS Chapter 205A, Part III.

§ 26-1.3 Definitions.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

**Activity.** Any action relating to construction, reconstruction, repair, improvement, grubbing, ~~[or any]~~ grading, or stockpiling ~~[of earth materials]~~.

**Annual Coastal Erosion Rate.** The average annual rate of coastal erosion applicable to each zoning lot as determined by historical analysis and shown on the Hawaii Shoreline Study web map as of the effective date of this ordinance, and as thereafter updated by the director by rule to reflect updated data in the Hawaii Shoreline Study web map.

**Applicant.** Any individual, organization, partnership, firm, association, trust, estate, or corporation, and any agency of the federal, the State, or ~~[any]~~ county government.

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

**Beach Processes.** Natural sand movement from wave, current, or wind action, including erosion or accretion of sand.



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**Buildable Area.** That portion of a zoning lot excluding the shoreline setback[;] area, required yards, street setbacks, stream or wetland setbacks, easements, and flag lot stems.

~~[**Certified Shoreline** or **Certified Shoreline Survey.** The shoreline as marked on the ground and as shown on a shoreline survey which has been certified by the State department of land and natural resources under Hawaii Administrative Rules Title 13, Chapter 222, entitled "Shoreline Certification."]~~

**Coastal Accretion.** A seaward trend in shoreline movement.

**Coastal Dune.** One of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may provide some form of protection from wave run-up and be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

**Coastal Erosion.** A landward trend in shoreline movement.

**Coastal Hazards.** Natural processes that place people, property, or the environment at risk for injury or damage, including but not limited to tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.

**Council.** The city council of the City and County of Honolulu.

**Department.** The department of planning and permitting, which agency shall act as the [~~county planning department~~] county planning department under applicable HRS [§ 205A-41.] sections.

**Director.** The director of planning and permitting.

**Dwelling Unit.** The same as defined in § 21-10.1. For purposes of this chapter, dwelling units include farm dwellings, ohana units, accessory dwelling units, and caretaker units.

**Earth Material.** Any sand, coral[;] or coral rubble, rocks, soil, fill, or marine deposits.

**Excavation or Cut.** Any act by which earth material is cut into, dug, or moved, and any condition resulting therefrom.



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**Fill.** Any act by which earth material is placed or deposited by artificial means, and any condition resulting therefrom.

**Grading.** Any excavation or fill, or any combination thereof.

**Grubbing.** Any act by which vegetation, including trees, shrubs, or other [plants,] flora, is dislodged or uprooted from the surface of the ground.

~~[HRS. The Hawaii Revised Statutes.]~~

**Hawaii Sea Level Rise Viewer.** The interactive viewer prepared by the Pacific Islands Ocean Observing System through coordination with the Hawaii Sea Grant Program and the State department of land and natural resources to support the Hawaii Sea Level Rise Vulnerability and Adaptation Report.

**Hawaii Sea Level Rise Vulnerability and Adaptation Report.** The 2017 report prepared by Tetra Tech, Inc. and the State department of land and natural resources, office of conservation and coastal lands, and adopted by the Hawaii climate change mitigation and adaptation commission.

**Hawaii Shoreline Study.** The coastal erosion data compiled by the coastal geology group in the school of ocean and earth science and technology at the University of Hawaii.

**Hawaii Shoreline Study Web Map.** The map created by the coastal geology group in the school of ocean and earth science and technology at the University of Hawaii to visualize and share data from the Hawaii Shoreline Study.

**Landscaping.** The modification of landscape or soils for an aesthetic or functional purpose, including but not limited to planting of vegetation. It does not include plants or hedges that may act as a shoreline hardening barrier.

**Makai.** Seaward or in a seaward direction toward the ocean.

**Mauka.** Landward or in a landward direction from the ocean.

**Minor Shoreline Structure.** A structure authorized to be located in the shoreline setback area through an approved minor shoreline structure permit that does not adversely affect beach processes, artificially fix the shoreline, interfere with public access or views to and along the shoreline, impede the natural processes or movement





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of the shoreline or sand dunes, alter the grade of the shoreline setback area, or endanger public health, safety, or welfare.

**Nonconforming Structure.** A structure or portion of a structure ~~[which]~~ that was previously lawful but ~~[which]~~ is currently located within the shoreline setback area as a result of subsequent beach erosion, or as a result of changes in the law relating to the shoreline setback~~[.]~~ area.

**Person.** Any individual, organization, partnership, firm, association, trust, estate, public or private corporation, the State or any of its political subdivisions, or any other legal entity.

**Practicable Alternative.** An alternative to the proposed project ~~[which]~~ that is available and ~~[capable of being done,]~~ achievable, taking into consideration existing technology and logistics, ~~[and]~~ which would accomplish the basic purpose of the project while avoiding or ~~[having less adverse impact]~~ decreasing adverse impacts on the shoreline setback area.

**Public Interest.** Principally benefiting the general public by promoting natural beach processes, expanding public access to the shoreline, enhancing public views, supporting public health, safety, and welfare, and prioritizing the welfare of the public over the welfare of an individual or individual household.

**Reconstruction.** Rebuilding a lawfully established structure when a licensed professional engineer or architect has valued the cost of the reconstruction at 50 percent or more of the current replacement cost of the structure, or if significant portions of the structure are proposed for replacement, including exterior walls, support beams, floors, ceilings, and the foundation.

**Repair.** Renovating or fixing ordinary damage to a structure if a licensed professional engineer or architect values the cost of the work at less than 50 percent of the current replacement cost of the structure, except as provided in § 26-1.6(a) for the repair or alteration of nonconforming structures. Repairs do not involve enlarging, adding to, or expanding a structure; increasing the size or degree of nonconformity of a structure; or intensifying the use of a structure or its impact on coastal processes. Repairs do not involve substantial improvements to a structure, like-for-like replacement of structural materials, or reconstruction.



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**Sea Level Rise Exposure Area.** The mapped zone on the Hawaii Sea Level Rise Viewer, or its successor, representing the aggregate of the following coastal hazard layers: passive flooding (still water high tide flooding), annual high wave flooding (overwash during the largest wave events of the year), and coastal erosion.

**Shoreline.** 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.** All of the land area between the shoreline and the shoreline setback line.]~~

**Shoreline Hardening.** The process of fortifying the shoreline or shoreline setback area with structures or landscaping, including but not limited to seawalls, revetments, the placement of loose rocks and boulders, geotextile erosion abatement measures, and the planting, watering, and maintenance of landscaping features like naupaka where it will interfere with the natural beach processes.

**Shoreline Lot.** A zoning lot of record, any portion of which lies within the shoreline setback area, or ~~[when there is]~~ if no certified shoreline survey exists, any portion of which lies within ~~[55 feet inland]~~ 130 feet of the natural vegetation line or debris line. A zoning lot may be determined to be a shoreline lot notwithstanding the existence of a second zoning lot or parcel situated between the first zoning lot and the shoreline.

**Shoreline Setback Area.** All of the land area between the shoreline and the shoreline setback line.

~~[**Shoreline Setback Line.** That line established by this chapter ~~[which runs inland]~~ that runs mauka from and parallel to the certified shoreline at the horizontal plane.~~

**Shoreline Survey.** A survey ~~[performed]~~ map rendered by a registered land surveyor for the purpose of determining the location of the shoreline, in accordance with applicable Hawaii Administrative Rules ~~[, Title 13, Chapter 222, entitled "Shoreline Certification."]~~. A shoreline survey is considered a certified shoreline survey when the location of the regulatory shoreline has been determined by the State board of land and natural resources or the State surveyor in accordance with HRS § 205A-42, or its successor, and the rules adopted pursuant thereto.



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~~[Shore Protection Structure. A structure which may artificially fix the location of the shoreline including but not limited to a groin, seawall, or revetment.]~~

**Stockpiling.** The temporary open storage of materials, including earth materials.

**Structure.** Any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment; or anything constructed or erected with a fixed location at or under the ground, or requiring a fixed location on or under the ground, or attached to something having or requiring a fixed location on or below the ground.

**§ 26-1.4 [Shoreline] Establishment of the shoreline setback line.**

- (a) ~~[General rule.]~~ Except as otherwise provided in this section, the shoreline setback line ~~[shall be]~~ is established 40 feet [inland] mauka from the certified shoreline[-] until July 1, 2024, after which the shoreline setback line will be established at the following distances mauka from the certified shoreline:
  - (1) Sixty feet plus 70 times the annual coastal erosion rate, up to a maximum setback of 130 feet, on zoning lots within all development plan and sustainable communities plan areas except the Primary Urban Center Development Plan area; provided that any property owner who believes the annual erosion rate applicable to a specific zoning lot does not accurately represent the actual erosion rate for that zoning lot may submit an application to the director requesting approval of an alternative coastal erosion rate methodology and data for the zoning lot in accordance with the procedures and informational requirements set forth in the department's rules implementing this chapter.
  - (2) Sixty feet on zoning lots within the Primary Urban Center Development Plan area.
  - (3) Sixty feet on zoning lots where historical erosion data has not been collected for the Hawaii shoreline study, or its successor, where the historical erosion data show coastal accretion, or where the historical erosion data show an annual coastal erosion rate of zero.
- (b) ~~[Adjustment of shoreline setback line on shallow lots.]~~ Where the ~~[depth of the]~~ buildable area of a zoning lot, ~~[as measured seaward from its inland edge,]~~ is reduced to less than ~~[30]~~ 1,500 square feet, the shoreline setback line ~~[shall]~~ may be adjusted to allow a minimum ~~[depth of]~~ buildable area of ~~[30]~~ 1,500 square feet[-], subject to review and confirmation by the director; provided that [the]



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- (1) The adjusted shoreline setback line ~~[shall be no]~~ may not be reduced to less than [20] 40 feet from the certified shoreline[-];
  - (2) The shoreline setback line may only be reduced to the minimum extent required to permit construction and repair within the reduced buildable area, including the minimum necessary area for wastewater treatment structures, required parking spaces, and other accessory structures;
  - (3) The proposed structure or activity is positioned in the farthest mauka location on the zoning lot;
  - (4) The buildable area is measured as a standard polygon with no angle exceeding 120 degrees;
  - (5) On zoning lots that exceed 60 feet in width, the side yards may be increased so that the buildable area depth is 30 feet;
  - (6) The front yard may be increased if the department of health requires wastewater treatment to be located within the front yard setback area; provided that the required front yard for the underlying zoning district may not be increased by more than 10 feet;
  - (7) The proposal does not involve new shoreline hardening;
  - (8) If a proposed structure is within a special flood hazard area, as defined in Chapter 21A, structural design and construction must be resilient to existing and increasing flood hazards with a finished lowest floor elevation a minimum of 3 feet above the flood insurance rate map base flood elevation; and
  - (9) If a proposed structure is outside of the special flood hazard area but within the sea level rise exposure area under the scenario envisioning 3.2 feet of sea level rise by the year 2100, the lowest floor of the structure must be a minimum of 3 feet above the highest adjacent grade.
- (c) ~~[Adjustment of shoreline setback line related to the construction of a shore-protection structure.]~~ Once a shoreline has been certified ~~[from which]~~ and a shoreline setback line ~~[can be]~~ has been established, no shoreline setback line ~~[shall]~~ may be established farther seaward as the result of a subsequent certified shoreline survey ~~[following the construction of a shore protection structure]~~. ~~[On a lot where the certified shoreline is permanently fixed by a shore protection~~



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~~structure, the shoreline setback line shall be established by measuring inland from the shoreline, as it was located prior to the construction of the shoreline protection structure.~~

~~Where the shore protection structure was constructed without a shoreline survey first being made and certified by the State department of land and natural resources, the director shall determine the prior location of the shoreline solely for the purpose of establishing the shoreline setback line. In so doing, the director shall consider the actual location of the high wash of the waves during the year and the location of the shoreline and the shoreline setback line on adjacent properties.~~

~~The resulting shoreline setback line may be further than 40 feet from the shoreline established by the department of planning and permitting following construction of the shore protection structure.]~~

- (d) A shoreline setback line determination approved by the director for zoning lots with erosion-rate-based setbacks may be issued at a property owner's request prior to the issuance of any land use, development, or building permits, or any subdivision actions.
- (e) Prior to the commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line must be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State.

§ 26-1.5 Prohibitions within the shoreline setback area.

- (a) The mining or taking of any earth material from the shoreline setback area is prohibited, with the following exceptions:
  - (1) The inadvertent taking from the shoreline setback area of materials, ~~[not in excess of one gallon per person per day, for reasonable, personal, noncommercial use, provided that it does not result cumulatively in changing the topography of the shoreline area;]~~ 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 shoreline setback variance granted pursuant to this chapter;



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- (3) The clearing of materials from existing drainage pipes, canals, and the mouths of streams, including clearing for purposes allowed under HRS § 46-11.5; provided that sand removed ~~[shall]~~ must be placed on adjacent areas unless the placement would result in significant turbidity~~[-er]~~, or unsanitary or undesirable conditions;
  - (4) The clearing of the shoreline setback area for State or city maintenance purposes, including clearing for purposes under HRS § 46-12; provided that sand removed ~~[shall]~~ must be placed on adjacent areas unless the placement would result in significant turbidity~~[-]~~, or unsanitary or undesirable conditions;
  - (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.
- (b) Structures and activities are prohibited within the shoreline setback area, with the following exceptions:
- (1) Minor structures and activities permitted under rules adopted by the department ~~[which do]~~ that will not, within the lifetime of the structure or duration of the activity, affect beach processes or artificially fix the shoreline and ~~[do]~~ will not interfere with public access, public views, or open space along the shoreline. If, due to beach erosion or other cause, the director determines that a minor structure permitted under this section may affect beach processes or public access, or has become located seaward of the shoreline, the director or other governmental agency having jurisdiction may order its removal;
  - (2) Minor structures and activities necessary for or ancillary to continuation, but not expansion, of agriculture or aquaculture in the shoreline setback area on June 16, 1989; provided that traditional Hawaiian fishpond systems may be restored or expanded as allowed under State law;
  - (3) A structure or activity that is necessary for or ancillary to a public shoreline-dependent facility or improvement, including but not limited to boating, maritime, aviation, public infrastructure, recreation-related, or



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lifeguard facilities; provided that the structure or activity will not interfere with beach processes or public beach access;

~~[(3)]~~(4) Maintenance, repair, reconstruction, and minor additions to or alterations of ~~[legal, publicly owned boating, maritime, or ocean sports recreational facilities, which result in little or no interference with natural shoreline processes. Privately]~~ lawfully established structures included in subdivision (3); provided that privately owned boating, maritime, or ocean sports recreational facilities are specifically [excluded from] not included in this exception;

~~[(4)]~~(5) Nonconforming structures or structures that have received a shoreline setback variance; ~~[and]~~

~~[(5)]~~(6) Construction, installation, maintenance, repair, and replacement of ~~[civil-defense]~~ public warning or signal devices and sirens[-]; or

(7) Beach and sand dune restoration and maintenance activities permitted by the State department of land and natural resources.

§ 26-1.6 Nonconforming structures.

(a) ~~[Any]~~ A nonconforming structure may be repaired or altered [in any manner which does]; provided that the repairs or alterations do not increase [its] or intensify the nonconformity[-], and the cumulative valuation of the repairs or alterations:

(1) Does not exceed 50 percent of the replacement cost over a 10-year period of that portion of the structure that is nonconforming and located 40 feet or less from the certified shoreline; or

(2) Does not exceed 75 percent of the replacement cost over a 10-year period of that portion of the structure that is nonconforming and located more than 40 feet from the certified shoreline but makai of the shoreline setback line.

(b) If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it ~~[shall]~~ may not be reconstructed except in conformity with the provisions of this chapter and



**A BILL FOR AN ORDINANCE**

the shoreline setback rules [~~or successor regulations.~~], as may be amended or superseded.

- (c) Reconstruction of [~~such~~] a nonconforming structure within the shoreline [~~area shall require a~~] setback area requires a shoreline setback variance.

**§ 26-1.7 Subdivision actions.**

- (a) Except as provided in this chapter, no new subdivision action, including the subdivision or consolidation of land, [~~for~~] involving an existing shoreline lot [~~to create~~] and the creation of new zoning lots may be approved, unless each new lot:

- (1) [~~Can accommodate a 60-foot shoreline setback, except for:~~

- (A) ~~Areas that are not within the coastal high hazard district and where the entire shoreline for the new lot is characterized by either:~~

- (i) ~~An authorized shoreline protection structure; or~~
- (ii) ~~A fixed, rocky shoreline;~~

~~In which case the department may approve new shoreline lots that will accommodate a 40-foot shoreline setback.~~

- (B) ~~Minor~~] Can accommodate a shoreline setback line established at 60 feet mauka from the certified shoreline until July 1, 2024, after which each newly created shoreline zoning lot must accommodate a shoreline setback line established at 130 feet mauka from the certified shoreline; provided that an exception may be granted to subdivision actions involving the subdivision or consolidation of land only for the purpose of creating easements or adjusting zoning lot lines[, and which] that will not result in any increase in the number of permitted dwelling units, nonresidential structures, or [~~lots.~~] zoning lots; and

- (2) Has a buildable area adequate to accommodate the proposed [~~development,~~] structures or activities, including [~~appurtenant~~] accessory uses and structures, such as parking.





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Accreted lands obtained from the State pursuant to HRS § 501-33 ~~[shall]~~ may not be included as part of the land area when ~~[making calculations of]~~ calculating the zoning lot size available for subdivision.

- (b) Subdivision of existing shoreline lots for the purpose of widening roadways designated on the public infrastructure maps adopted pursuant to Chapter 4, Article 8, may be permitted~~[;]~~ upon the review and approval of the director.
- (c) New residential zoning lots may not be approved, unless each new lot:
  - (1) Has a buildable area of at least ~~[3,000]~~ 5,000 square feet; ~~[and]~~
  - (2) Has a buildable area outside of the shoreline setback area with a minimum depth and width of at least 50 feet~~[;]~~;
  - (3) Is subdivided perpendicular to the shoreline to create deep lots that maximize opportunities to place structures far from the shoreline; and
  - (4) Is not a flag lot.

§ 26-1.8 Criteria for granting a shoreline setback variance.

- (a) The director, as provided in § 26-1.10, may grant a shoreline setback variance upon finding that, based upon the record presented, the proposed structure or activity is necessary for or ancillary to:
  - (1) Cultivation of crops;
  - (2) Aquaculture;
  - (3) Landscaping; provided that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline; ~~[and]~~ or
  - (4) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the director also finds that the 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.



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(b) The director may also grant a shoreline setback variance upon finding that, based upon the record presented, the proposed structure or activity meets one of the following standards [~~of this section~~]:

(1) *Shoreline-dependent facility standard.* A shoreline setback variance may be granted for [~~an activity or~~] a structure or activity that is necessary for or ancillary to a shoreline-dependent facility or improvement, including but not limited to public infrastructure, drainage facilities, and boating, maritime, or [~~ocean sports~~] water sport recreational facilities; provided that the proposal is the practicable alternative [~~which~~] that best conforms to the purpose of the shoreline setback rules.

(2) *Public interest standard.* A shoreline setback variance may be granted for [~~an activity or~~] a structure or activity that is necessary for or ancillary to facilities or improvements by a public agency or [~~by a~~] public utility regulated under HRS Chapter 269, or necessary for or ancillary to private facilities or improvements that are clearly in the public interest; provided that the proposal is the practicable alternative [~~which~~] that best conforms to the purpose of this chapter and the shoreline setback rules.

[~~Public interest means principally of benefit to the general public, as determined by the director.~~]

(3) *Hardship Standard.*

(A) A shoreline setback variance may be granted for [~~an activity or structure that is necessary or ancillary to the following private facilities or improvements,~~] a structure or activity if hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area[~~:~~]:

(i) ~~Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; and~~

(ii) ~~Private facilities or improvements that may artificially fix the shoreline, but only if hardship is likely to be caused by shoreline erosion and conditions are imposed prohibiting any such structure seaward of the existing shoreline unless it is clearly in the public interest].~~



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- (B) For the purposes of this subsection, hardship may be found only if[~~:~~] all of the following are met:
  - (i) The structures will neither adversely affect beach processes nor artificially fix the shoreline, and the applicant and landowner would be deprived of reasonable use of the land if required to comply fully with [the shoreline setback ordinance] this chapter and the shoreline setback rules;
  - (ii) The applicant's proposal is due to unique circumstances [and], does not draw into question the reasonableness of this chapter and the shoreline setback rules[;], is consistent and compatible with surrounding land uses, and is unlikely to adversely impact neighboring properties; and
  - (iii) The proposal is the practicable alternative [which] that best conforms to the purpose of this chapter and the shoreline setback rules. The analysis of the practicable alternatives must include a thorough assessment of potential impacts and consideration of mitigation measures to avoid or minimize impacts, including but not limited to the relocation or reconfiguration of structures and the restoration of coastal resources.
  
- (C) A shoreline setback variance to artificially fix the shoreline may not be granted in areas with sandy beaches or dunes, or where artificially fixing the shoreline may interfere with existing recreational and waterline activities or natural sand and sediment replenishment that occur as part of beach processes, unless the granting of the shoreline setback variance is clearly demonstrated to be in the public interest.
  
- ~~(C)~~(D) Before granting a [hardship variance,] shoreline setback variance on the basis of hardship, the director must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason, the determination of the reasonableness of the use of land [may] should properly consider factors such as shoreline conditions, erosion, surf and flood conditions, and the geography of the zoning lot.



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~~[(D)]~~(E) Hardship ~~[shall]~~ may not be determined as a result of a zone change, plan review use approval, subdivision approval, cluster housing approval, planned development housing approval, conditional use permit, or any other discretionary land use permit granted after June 16, 1989.

§ 26-1.9 Conditions on shoreline setback variances.

- (a) No shoreline setback variance ~~[shall]~~ may be granted unless appropriate conditions are imposed:
  - (1) To maintain safe access to and along the shoreline or adequately compensate for its loss;
  - (2) To minimize risk of adverse impacts ~~[on]~~ to coastal, beach, and marine processes;
  - (3) To minimize the risk of existing legal or proposed structures falling 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.
- (b) The director may condition the approval of a shoreline setback variance for structures, activities, and uses within the shoreline setback area on the property being ineligible for subsequent shoreline setback variances to construct shoreline hardening within the shoreline setback area, and stipulate that hardship may not be determined as a result of the prior shoreline setback variance approval.
- (c) The city is not liable for any losses, liabilities, claims, or demands arising out of or resulting from damages to structures or property within the shoreline setback area approved by a shoreline setback variance.

§ 26-1.10 Authority to act on shoreline setback variance applications [~~Notice of application~~].

- (a) The director shall act upon all shoreline setback variance applications according to the criteria ~~[contained]~~ set forth in this chapter.



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- (b) The ~~[director]~~ applicant shall give reasonable notice of an application for a shoreline setback variance under this chapter to abutting property owners, [tø] affected neighborhood boards and community associations, and [tø] persons [whe] that have requested receipt of a notice.

**§ 26-1.11 Public hearings ~~[on variance applications].~~**

- (a) The director shall hold a public hearing on each shoreline setback variance application~~;~~ except that the director may waive the hearing on variances for the following:
  - ~~(1) Stabilization of shoreline erosion involving the movement of sand entirely on public lands;~~
  - ~~(2) Application for shore protection where a legal habitable structure is at risk of immediate damage from shoreline erosion as determined by the director;~~
  - ~~(3) Other structures or activities; provided that no person or agency has requested a public hearing within 25 calendar days after public notice of the application;~~
  - ~~(4) Application qualifying for an emergency permit under Chapter 25; or~~
  - ~~(5) Maintenance, repair, reconstruction, and minor additions to or alterations of legal boating, maritime or water sports recreational facilities, which result in little or no interference with natural shoreline processes.] that has been accepted as complete.~~
- (b) The director shall give reasonable notice of the public hearing ~~[on any]~~ for a shoreline setback variance application to the applicant, ~~[to any person or agency that]~~ affected neighborhood boards and community associations, and persons that have requested notice of the public [hearing, and] hearing. The applicant must mail notices to [abutting] neighboring property owners within 300 feet of the zoning lot, and [any other person who] persons that have requested receipt of a notice[-]; provided that if a neighboring property is a condominium project, notice to the association of apartment owners of the condominium project will serve as notice to the owners of the units in the project.



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**§ 26-1.12 [~~Variance application fee.~~] Application review and processing fees.**

(a) ~~[The application fee for a variance under this chapter will be \$2,400, which will not be refundable; provided that the fee will be waived for city projects.]~~ The following table sets forth application review and processing fees, which are not refundable. The review fees cover the costs of determining whether an application is complete or incomplete.

<u>Application Type</u>	<u>Review Fee</u>	<u>Processing Fee</u>	<u>TOTAL FEE</u>
<u>Shoreline Setback Variance</u>	<u>\$400</u>	<u>\$2,000</u>	<u>\$2,400</u>
<u>Environmental Assessment</u>	<u>\$200</u>	<u>\$1,000</u>	<u>\$1,200</u>
<u>Environmental Impact Statement</u>	<u>\$400</u>	<u>\$2,000</u>	<u>\$2,400</u>
<u>Minor Shoreline Structure Permit</u>	<u>\$100</u>	<u>\$500</u>	<u>\$600</u>
<u>Shoreline Setback Line Determination</u>	<u>No fee</u>	<u>\$600 per tax map key</u>	<u>\$600 per tax map key</u>
<u>Confirmation of Shoreline Structure Nonconforming Status</u>	<u>No fee</u>	<u>\$600 per tax map key</u>	<u>\$600 per tax map key</u>

(b) ~~When [a shoreline setback variance or minor shoreline structure permit application, or a related environmental assessment or impact statement is submitted after the applicant's having completed the activity or structure for which the variance or minor shoreline structure permit is sought, or having been cited for the activity or construction without having obtained a variance or minor shoreline structure permit, the application or processing fee will be doubled.]~~ an application is submitted, it must include all required fees. The nonrefundable application review fee will immediately be applied to the review of the application. If the application is accepted for processing, the processing fee will be applied to the application. If the application is determined to be incomplete, the processing fee will be returned.

~~(c) When a request for a written clearance regarding compliance with the shoreline setback ordinance or confirmation regarding the nonconforming status of a shoreline structure is submitted for processing, the fee will be \$600 per tax map key.~~



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- ~~(d) When a minor shoreline structure permit application is submitted for processing, the application fee will be \$600.~~
- ~~(e) When an environmental assessment or impact statement must be prepared as a prerequisite to a variance required by this chapter, and is submitted to the department of planning and permitting for processing as the accepting agency, there will be a processing fee of \$1,200 for an environmental assessment, and \$2,400 for an environmental impact statement.~~
- ~~(f) When a shoreline setback variance, minor shoreline structure permit, or prerequisite environmental assessment or impact statement is submitted for processing, there will be a nonrefundable application review fee to determine whether the application is complete or incomplete, as follows:
 
  - ~~(1) Applications with a fee of \$2,400 or more will have an application review fee of \$400;~~
  - ~~(2) Applications with a fee of \$1,200 will have an application review fee of \$200; and~~
  - ~~(3) Minor shoreline structure permits will have an application review fee of \$100.~~~~

~~When an application under this section has been accepted by the department of planning and permitting for processing, the application review fee for the submitted application will be counted as partial payment towards the total application fee for that submittal.]~~

- (c) Review fees and processing fees will be doubled for permits and environmental disclosure documents submitted:
 
  - (1) After a notice of violation has been issued for the activity or construction; or
  - (2) After the proposed work is completed.
- (d) Fees may be waived for city projects.



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§ 26-1.13 Civil fines.

- (a) Any person ~~[who violates]~~ violating this chapter, any rule adopted pursuant thereto, any permit issued pursuant thereto, or any condition of a shoreline setback variance ~~[shall,]~~ will, upon notice issued pursuant to § 26-1.14, be deemed to have committed a civil violation and ~~[shall]~~ will be subject to an initial civil fine not to exceed ~~[\$10,000]~~ \$100,000 per violation and a maximum daily fine of ~~[\$1,000]~~ \$10,000 until the violation is corrected or a shoreline setback variance is granted.
- (b) [A] Any order to pay civil fines will not be stayed by the submittal of a shoreline setback variance application [submitted after an applicant's having completed the activity or structure, or having been cited for the activity or the construction without having obtained a variance, shall not stay any order to pay civil fines.] after the applicant has initiated, completed, or been cited for the activity.

§ 26-1.14 Enforcement.

- (a) *Issuance of notice of violation and order.* If the director determines that any person is violating this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of a shoreline setback variance, the director may have the person served~~[, by registered or certified mail, delivery, or publication,]~~ with a written notice of violation and order~~[.]~~ in compliance with the agency's administrative rules.
  - (1) *Contents of the notice of violation.* The notice ~~[shall]~~ must include at least the following information:
    - (A) Date of notice;
    - (B) The name and address of the person given notice;
    - (C) The section number of the ordinance or rule ~~[which]~~ that has been violated;
    - (D) The nature of the violation; and
    - (E) The location of the violation and the date and time that the violation was discovered.





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- (2) *Contents of the order.* The order may require the person to do any or all of the following:
  - (A) Cease and desist from the violation;
  - (B) Correct the violation at the person's own expense, which may include removal of any structure and restoration of land to previous conditions;
  - (C) Pay a civil fine not to exceed ~~[\$10,000]~~ \$100,000 in the manner, at the place, and before the date specified in the order;
  - (D) Pay a civil fine not to exceed ~~[\$1,000]~~ \$10,000 per day for each day in which the violation persists, in the manner, at the place, and before the date specified in the order; and
  - (E) Appear before the director at a time and place specified in the order and answer the charges specified in the notice of violation.

The order ~~[shall]~~ must advise the person that the order ~~[shall]~~ will become final 30 days after the date of its ~~[mailing, delivery, or publication,]~~ service unless written request for a hearing is mailed or delivered to the director ~~[within 30 days.]~~ prior to expiration of the 30-day period.

- (b) *Effect of order—right to hearing.* The order issued by the director under this section ~~[shall]~~ will become final 30 days after the date of the ~~[mailing, delivery, or publication]~~ service of the order. The person ~~[to whom]~~ in receipt of the notice ~~[is directed]~~ may request a hearing before the director. A request for a hearing ~~[shall]~~ will not stay any provision of the order.

The request for a hearing ~~[shall]~~ will be considered timely if a written request is delivered or mailed and postmark dated to the director within ~~[said 30 days.]~~ the 30-day period.

Upon receipt of a request for a hearing, the director shall specify a time and place for the person subject to the order to appear and be heard. The hearing ~~[shall]~~ will be conducted by the director or the director's designee in accordance with HRS Chapter 91. Following the hearing, the director or the director's designee may affirm, modify, or rescind the order, as ~~[in the opinion of]~~ the director ~~[may be]~~ or the director's designee deems appropriate.



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- (c) *Judicial enforcement of order.* The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by ~~[such]~~ an order, the director need only show that a notice of violation and order was served, a hearing was held or the ~~[time allowed for requesting]~~ 30-day period during which a hearing may be requested had expired without such a request, ~~[that]~~ a civil fine was imposed, and ~~[that]~~ the fine imposed has not been paid.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of any shoreline setback variance in addition to any other remedy provided for under this chapter.

- (d) *Nonexclusiveness of remedies.* The remedies provided in this chapter for enforcement of this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of any shoreline setback variance ~~[shall]~~ will be in addition to any other remedy as may be provided by law.
- (e) *Appeal in accordance with statute.* If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91; provided that no provision of ~~[such]~~ an order ~~[shall]~~ will be stayed on appeal, unless specifically ordered by a court of competent jurisdiction.

§ 26-1.15 **Illegal shore protection structures.**

Where the shoreline is affected by a ~~[man-made]~~ structure that has not been authorized ~~[with government]~~ pursuant to governmental agency permits required by law:

- (1) If any part of the structure ~~[lies]~~ is located within the current tax map boundaries of a ~~[privately-owned]~~ privately-owned parcel, then for purposes of enforcement of this chapter, the structure ~~[shall]~~ will be construed ~~[to be]~~ as being located entirely within the shoreline setback area; and
- (2) No building permit or grading permit ~~[shall]~~ will be granted on a shoreline lot unless and until the illegal structure is removed or corrected~~[-except,-~~



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~~however, that such permits may be granted where the director determines it necessary to protect public health and safety].~~

§ 26-1.16 Rules.

The ~~[department]~~ director shall adopt rules pursuant to HRS Chapter 91 to implement this chapter and HRS Chapter 205A, Part III. The rules ~~[may designate high-quality]~~:

- (1) May identify high-quality sandy beaches [which] that should be preserved [and may include];
- (2) May include guidelines or prohibitions relating to the types of shore protection structures [which] that may or may not be [allowed on these] permitted on high-quality beaches and other beaches[-];
- (3) May, after the initial determination of the average annual rate of coastal erosion on the effective date of this ordinance, update the determination of the average annual rate of coastal erosion as necessary to reflect updated data in the Hawaii Shoreline Study web map; and
- (4) Must set forth the procedures and informational requirements by which a property owner may submit an application requesting approval of an alternative coastal erosion rate methodology and data if the property owner believes the annual erosion rate applicable to the zoning lot does accurately represent the actual erosion rate for that zoning lot."

SECTION 3. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. In SECTION 2 of this ordinance, the Revisor of Ordinances shall, pursuant to the Revisor of Ordinances' authority under § 1-16.3(b)(1), Revised Ordinances of Honolulu 2021, replace the phrase "effective date of this ordinance" with the actual effective date.



**A BILL FOR AN ORDINANCE**

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SECTION 4. This ordinance takes effect upon its approval; provided that:

1. Any application for a shoreline setback variance submitted to the Director of Planning and Permitting and accepted as complete prior to July 1, 2024, is not affected by the determination of the shoreline setback line under § 26-1.4, Revised Ordinances of Honolulu 2021, or any successor ordinance;
2. Any application for a subdivision action submitted to the Director of Planning and Permitting and accepted as complete prior to July 1, 2024, is not affected by the determination of the shoreline setback line for subdivision actions involving an existing shoreline zoning lot and the creation of new zoning lots under § 26-1.7(a)(1), Revised Ordinances of Honolulu 2021, or any successor ordinance; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE 23-3

BILL 41 (2022), CD2

**A BILL FOR AN ORDINANCE**

- 3. This ordinance does not affect any shoreline setback variances that have been approved prior to the effective date of this ordinance.

INTRODUCED BY:

Tommy Waters (br)

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE OF INTRODUCTION:

June 23, 2022  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

*Duane Pang*

Deputy Corporation Counsel  
**DUANE W.H. PANG**

APPROVED this 9th day of March, 2023.

*Rick Blangiardi*

RICK BLANGIARDI, Mayor  
City and County of Honolulu

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

BILL 41 (2022), CD2

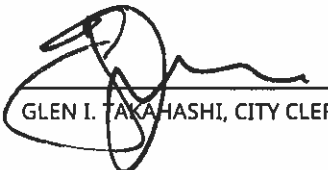
Introduced: 06/23/22 By: TOMMY WATERS - BY REQUEST Committee: PLANNING AND THE ECONOMY (P&E)

Title: RELATING TO SHORELINE SETBACKS.

Voting Legend: \* = Aye w/Reservations

06/23/22	INTRO	Introduced.
07/06/22	CCL	Passed first reading.  9 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS
08/25/22	ZP	Reported out for passage on second reading and scheduling of a public hearing as amended in CD1 form.  CR-227  4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
08/26/22	PUBLISH	Public hearing notice published in the Honolulu Star-Advertiser.
09/07/22	CCL/PH	Committee report adopted. Bill passed second reading as amended, public hearing closed and referred to committee.  9 AYES: CORDERO, ELEFANTE, FUKUNAGA*, KIA'ĀINA*, SAY*, TSUNEYOSHI, TULBA*, TUPOLA*, WATERS
09/14/22	PUBLISH	Second reading notice published in the Honolulu Star-Advertiser.
11/08/22		Councilmember Carol Fukunaga, representing Council District VI, resigned from office. [Refer to Communication CC-339(22)]  Councilmember Brandon J.C. Elefante, representing Council District VIII, resigned from office. [Refer to Communication CC-338(22)]
11/29/22	CCL	Tyler Dos Santos-Tam was appointed to fill a vacancy in the Office of Councilmember for Council District VI. (Refer to RES22-272)  Val A. Okimoto was appointed to fill a vacancy in the Office of Councilmember for Council District VIII. (Refer to RES22-273)
02/09/23	P&E	Reported out for passage on third reading as amended in CD2 form.  CR-32(23)  5 AYES: CORDERO, KIA'ĀINA, OKIMOTO, SAY, WEYER
02/22/23	CCL	Committee report adopted and Bill passed third reading as amended.  9 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, OKIMOTO, SAY, TULBA*, TUPOLA*, WATERS, WEYER

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

  
GLEN I. TAKAHASHI, CITY CLERK

  
TOMMY WATERS, CHAIR AND PRESIDING OFFICER

**Ordinance No. 23-4 Relating to the Special Management Area, ROH Chapter 25:  
Special Management Areas**

- ROH Chapter 25 Article 1 General Provisions
- ROH Chapter 25 Article 2 Special Management Area
- ROH Chapter 25 Article 3 Objectives, Policies, and Guidelines
- ROH Chapter 25 Article 4 Permit Review Guidelines
- ROH Chapter 25 Article 5 Permit Processing Procedures
- ROH Chapter 25 Article 6 Required Conditions
- ROH Chapter 25 Article 7 Exemptions
- ROH Chapter 25 Article 8 Penalties
- ROH Chapter 25 Article 9 Enforcement



**A BILL FOR AN ORDINANCE**

RELATING TO THE SPECIAL MANAGEMENT AREA.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to update Chapter 25, Revised Ordinances of Honolulu 2021, relating to the special management area, and to incorporate amendments made by Act 16, Session Laws of Hawaii 2020, to HRS Chapter 205A, the State Coastal Zone Management law.

SECTION 2. Chapter 25, Revised Ordinances Honolulu 2021, is amended to read as follows:

**"CHAPTER 25: SPECIAL MANAGEMENT AREAS**

**ARTICLE 1: GENERAL PROVISIONS**

**§ 25-1.1 Authority.**

Pursuant to authority conferred by HRS Chapter 205A, the regulations and procedures ~~[hereinafter contained]~~ in this chapter are established and ~~[shall]~~ apply to all lands within the special management area of the ~~[City and County of Honolulu.]~~ city.

**§ 25-1.2 Purpose~~[-]~~ and intent.**

It is the city's policy to preserve, protect, and ~~[where]~~ whenever possible, ~~[to]~~ restore the natural resources of the coastal zone ~~[of Hawaii]~~. Special controls on development within an area ~~[along]~~ in proximity to the shoreline are necessary to avoid permanent loss of valuable resources and foreclosure of management options, and to ~~[insure]~~ ensure that adequate public access is provided to ~~[public owned or used]~~ beaches, recreation areas, and natural reserves, by dedication or other means. It is also the policy of the city to avoid or minimize damage to ~~[natural or historic special management area]~~ wetlands ~~[wherever]~~ whenever prudent or feasible; to require that activities not dependent upon a wetland location be located at upland sites; and to allow ~~[wetland]~~ losses of wetlands only ~~[where]~~ when all practicable measures have been applied to reduce those losses that are unavoidable and in the public interest.





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To ensure this policy is adequately implemented, no development, as defined in this chapter, may be undertaken within the special management area without special management area permit approval. Special management area permit approval is required prior to obtaining any other permits or approvals other than State land use district boundary amendments, zone changes, and amendments to the general plan and development plans, including the development plans entitled "sustainable communities plans."

§ 25-1.3 Definitions.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning. These definitions are intended to clarify but not replace or negate the definitions used in HRS Chapter 205A.

**Agency.** The department of planning and permitting [~~of the City and County of Honolulu~~].

**Applicant.** Includes any individual, organization, partnership, firm, association, trust, estate, limited liability company, or corporation [~~including any utility~~], and any agency of the federal, State, and county government.

~~["City and county" means the City and County of Honolulu.]~~

**Artificial Light or Artificial Lighting.** The light emanating from any fixed human-made device.

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

**Coastal Dune.** One of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may provide some form of protection from wave run-up and be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

**Coastal Hazards.** Natural processes that place people, property, or the environment at risk for injury or damage, including but not limited to tsunami, hurricane, wind, wave, storm surge, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.



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**Council.** The city council of the City and County of Honolulu, which body shall act as the "authority" under HRS Chapter 205A.

**Crops.** Agricultural produce or parts of plants or trees cultivated for commercial or personal use.

**Cumulative Impact.** The impact on the environment that results from the incremental impact of an action or development when added to other past, present, and reasonably foreseeable future actions or developments. Cumulative impacts can result from individually minor but collectively significant actions and development taking place over a period of time.

**Development.** Any of the uses, activities, or operations on land[;], or in or under water, that occur within the special management area [~~that are included below, but not these uses, activities, or operations excluded in subdivision (2).~~], as follows.

- (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 extraction 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 intensity of use [~~of water~~], ecology [~~related thereto~~], or [~~of~~] access [~~thereto~~]; to water; and
  - (E) Construction, reconstruction, [~~demolition~~], or alteration of the size of any structure[;], including but not limited to the construction or reconstruction of a dwelling unit:
    - (i) Situated on a shoreline lot or a lot that is impacted by waves, storm surges, high tide, or shoreline erosion, including additions that exceed 300 square feet;
    - (ii) When the dwelling unit and related garages, carports, covered lanais, and accessory structures have an aggregate floor area of 7,500 square feet or more; or



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(iii) That is part of a larger development of three or more dwelling units.

(2) Development does not include the following:

(A) Construction or reconstruction of a ~~[single-family residence]~~ dwelling unit that is less than 7,500 square feet of floor area, is not situated on a shoreline lot or a lot that is impacted by waves, storm surges, high tide, or shoreline erosion, and is not part of a larger development~~[-; provided that, for the purposes of this definition, "floor area" means floor area as defined under § 21-10.1;]~~ of three or more dwelling units;

(B) Structural and nonstructural improvements:

(i) To existing dwelling units, including the addition of minor accessory structures and floor area additions; provided that such additions are limited to 300 square feet if the dwelling unit is considered development under subdivision (1)(E)(i), (ii), or (iii); or

(ii) Directly related to relocating a dwelling unit farther mauka or to an area less susceptible to coastal hazards, on the same zoning lot, and activities related to the relocation of the dwelling unit;

(C) Repair or maintenance of roads and highways within existing rights-of-way;

~~[(G)]~~(D) Routine maintenance dredging of existing streams, channels, [and] or drainageways;

~~[(D)]~~(E) The repair and maintenance of underground utility lines, including but not limited to water, sewer, power [and], or telephone[-and] lines, or minor appurtenant structures, such as pad mounted transformers and sewer pump stations;

~~[(E)]~~(F) Zoning variances, except [for] with respect to height, density, or parking, [and] or shoreline setback[-;] variances;

~~[(F)]~~(G) Repair, maintenance, or interior alterations to existing structures;



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~~(G)~~(H) Demolition or removal of structures, except ~~[these]~~ for structures located on any historic site as designated in national or State registers;

~~(H)~~(I) 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 ~~[authority]~~ agency in accordance with subdivision (3); provided that this exclusion does not apply to uses associated with agricultural activity dedicated to manufacturing, processing, or packaging;

~~(I)~~(J) The transfer of title to land;

~~(J)~~(K) The creation or termination of easements, covenants, or other rights in structures or land;

~~(K)~~ Final subdivision approval;

~~(L)~~ The subdivision of land into lots greater than 20 acres in size;

~~(M)~~(L) The subdivision of a parcel of land into four or fewer parcels ~~[when] if no associated construction activities are proposed; provided that [any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;]~~ after the initial subdivision, any subsequent subdivision of the resulting parcels will be considered development for purposes of this chapter;

~~(N)~~(M) Installation of underground utility lines and appurtenant aboveground fixtures less than ~~[four]~~ 4 feet in height along existing corridors;

~~(O)~~ Structural and nonstructural improvements to existing single-family residences including additional dwelling units, where otherwise permissible;

~~(P)~~(N) Nonstructural improvements to existing commercial structures; [and] or



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~~(Q)~~(O) Construction, installation, maintenance, repair, ~~and~~ or replacement of ~~civil defense~~ emergency management warning or signal devices and sirens.

(3) *Cumulative impact.* Whenever the ~~authority~~ agency finds that any use, activity, or operation ~~excluded in subdivision (2)~~ that is not otherwise considered development is or may become part of a larger project, the cumulative impact of which may have a significant adverse environmental or ecological effect on the special management area, that use, activity, or operation ~~shall~~ will be defined as development for the purpose of this chapter.

(4) *Significant effect.* Whenever the ~~authority~~ agency finds that a use, activity, or operation ~~excluded in subdivision (2)~~ that is not otherwise considered development may have a significant adverse environmental or ecological effect on the special management area ~~or special wetlands areas~~, that use, activity, or operation ~~shall~~ will be defined as development for the purposes of this chapter.

**Directly Illuminate.** To illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.

**Director.** The director of ~~the department of~~ planning and permitting, ~~City and County of Honolulu, or authorized subordinate~~.

**Dwelling, Detached.** Has the same meaning as defined in § 21-10.1.

**Dwelling Unit.** Has the same meaning as defined in § 21-10.1. For purposes of this chapter, dwelling units include farm dwellings, ohana units, accessory dwelling units, and caretaker units.

**Effects or Impacts.** Changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternative, including those effects that occur at the same time and place as the proposed action or alternative and may include effects that are later in time or farther removed in distance from the proposed action or alternative.

~~[EIS. An informational document prepared in compliance with the environmental quality commission's rules implementing HRS Chapter 343.]~~



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**Emergency Permit.** Special management area emergency permit as defined in HRS § 205A-22.

**Environmental Disclosure Document.** An environmental assessment or an environmental impact statement prepared in compliance with HRS Chapter 343.

**Finding of No Significant Impact.** A determination based on an environmental assessment that the subject action will not have a significant effect and[;] therefore[;] will not require the preparation of an environmental impact statement.

**Floor Area.** The area of all floors of a structure excluding unroofed areas, measured from exterior faces of exterior walls. The floor area includes areas under the roof overhang or eaves, and the roof or floor above which are supported by posts, columns, partial walls, or similar structural members.

**Hawaii Sea Level Rise Vulnerability and Adaptation Report.** The 2017 report prepared by Tetra Tech, Inc., and the State department of land and natural resources, office of conservation and coastal lands, and adopted by the Hawaii climate change mitigation and adaptation commission.

**Hawaii Sea Level Rise Viewer.** The interactive viewer prepared by the Pacific Islands Ocean Observing System through coordination with the Hawaii sea grant program and the State department of land and natural resources to support the Hawaii Sea Level Rise Vulnerability and Adaptation Report.

~~[Historic Wetlands. Wetlands that have been in existence for 50 years or longer.]~~

~~[Minor Permit. Special management area minor permit as defined in HRS § 205A-22.]~~

~~[Natural Wetlands. Those wetlands not created by a human activity.]~~

**Land.** Has the same meaning as defined in HRS Chapter 205A.

**Mauka.** Landward or in a landward direction from the ocean.

**Person.** Any individual, organization, partnership, firm, association, trust, estate, public or private corporation, limited liability company, the State or any of its political subdivisions, or any other legal entity.



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**Restoration.** A human activity that returns a natural area, including a wetland or former wetland, from a disturbed or altered condition with lesser acreage or functions[-] to an improved condition.

**Sea Level Rise Exposure Area.** The mapped zone on the Hawaii Sea Level Rise Viewer, or its successor, representing the aggregate of the following coastal hazard layers: passive flooding (still water high tide flooding), annual high wave flooding (overwash during the largest wave events of the year), and coastal erosion.

**Shoreline.** The upper reaches of the wash of the waves, other than storm and [~~tidal~~] seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edges of vegetation growth or the upper limit of debris left by the wash of the waves.

**Shoreline Lot.** [~~Has the same meaning as defined in Chapter 26.~~] A zoning lot of record, any portion of which lies within the shoreline setback area, or if no certified shoreline survey exists, any portion of which lies within 130 feet inland of the natural vegetation line or debris line. A zoning lot may be determined to be a shoreline lot notwithstanding the existence of a second zoning lot between the first zoning lot and the shoreline.

~~[Shoreline Management Permit. Has the same meaning as "special-management area use permit."]~~

**Shoreline Setback Area.** All of the land area between the shoreline and the shoreline setback line.

**Shoreline Setback Line.** The line established by Chapter 26 that runs mauka from and parallel to the certified shoreline at the horizontal plane.

**Shoreline Survey.** A survey map [~~showing the shoreline as determined by the State board of land and natural resources~~] rendered by a registered land surveyor for the purpose of determining the location of the shoreline. A shoreline survey is considered a certified shoreline survey when the location of the regulatory shoreline has been determined by the State board of land and natural resources or the State surveyor in accordance with HRS § 205A-42 and the rules adopted pursuant thereto.

**Significant Effect.** The sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State.



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**Special Management Area or SMA.** The land extending [~~inland~~] mauka from the certified shoreline, as established in this chapter [~~and~~], with the mauka boundary delineated on the maps established by the council and filed with the council and agency pursuant to HRS § 205A-23.

~~[Special Management Area Minor Permit. An action by the 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 Permit. An action by the authority authorizing development, the valuation of which exceeds \$500,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.]~~

**Special Wetland Area.** That area that is [~~both:~~

- (1) ~~Within the SMA; and~~
- (2) ~~In or within 300 feet of a natural or historic wetland.]~~ a wetland and the area within 50 feet of a wetland.

**Structure.** [~~Includes but is not limited to~~] Any portion of any building, pavement, road, pipe, flume, [conduit, siphon, aqueduct, telephone line and electrical power transmission tower, and distribution line.] utility line, fence, groin, wall, or revetment; or anything constructed or erected with a fixed location at or under the ground, or requiring a fixed location on or under the ground, or attached to something having or requiring a fixed location on or below the ground.

**Valuation.** [~~Shall be determined by the agency and means the~~] The estimated [cost to replace the structure in kind,] fair market value of the proposed development based on current [replacement costs, or in the cases of other development, as defined in this section, the fair market value of the development.] costs relating to and including site preparation, materials, labor, stockpiling, grading, grubbing, and impervious surfaces.

**Wetland.** An area possessing three essential characteristics:

- (1) Hydrophytic vegetation;
- (2) Hydric soils; and
- (3) Wetland hydrology,





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as defined in the "Corps of Engineers Wetlands Delineation Manual," January 1987[;], as amended. Wetlands ~~[shall also]~~ include ponds and mudflats, which while possessing hydric soils and wetland hydrology, may not have the commonly required hydrophytic vegetation. ~~[For the purposes of this chapter, only natural or historic wetlands are included within the protected group of wetlands.]~~

**ARTICLE 2: SPECIAL MANAGEMENT AREA**

**§ 25-2.1 Adoption.**

- (a) The special management area, as established by the council in this chapter and shown on the special management area maps, which ~~[maps are]~~ have been adopted and made a part of this chapter and filed with the council, ~~[on the effective date of this chapter,]~~ [shall be] is the ~~[city and county's]~~ city's official special management area to be administered and enforced by the director under this chapter.
- (b) This chapter ~~[shall apply]~~ applies to all development that would affect ~~[natural or historic]~~ wetlands ~~[in the City and County of Honolulu,]~~ within the special management area, regardless of the size of the wetland.

**§ 25-2.2 Included area.**

The special management area ~~[shall include]~~ includes those areas of the island of Oahu so designated from the mauka boundary on the maps[;] to the shoreline; and the islands within ~~[three]~~ 3 miles offshore of Oahu, including but not limited to those islands shown on the maps; and the northwestern Hawaiian Islands, which include Nihoa, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, and Kure Atoll.

~~[§ 25-2.3 Wetlands.~~

- ~~(a) The definition and delineation of wetlands shall be based upon:~~
  - ~~(1) The "Corps of Engineers Wetlands Delineation Manual," January 1987. The definition shall incorporate the three essential technical criteria of wetlands:~~
    - ~~(A) Hydrophytic vegetation;~~
    - ~~(B) Hydric soils; and~~



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~~(C) Wetland hydrology.~~

~~(2) Also included within the city's definition of wetland areas are ponds and mudflats, which while possessing hydric soils and wetland hydrology may not have the commonly required hydrophytic vegetation.~~

~~(b) Representatives of any one or more of the following: the department of land and natural resources, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, or other applicable agencies will be contacted for assistance in identifying the extent and functional values of wetlands.~~

~~(c) The publication "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al., 1979) and the U.S. Fish and Wildlife Service National Wetlands Inventory Maps (1978), submergent aquatic vegetation inventories, infrared aeriels, and property appraiser aeriels shall be utilized for general identification of wetlands within the SMA. It is recognized, however, that such graphic sources do not depict the full extent of wetland delineations and function characteristics.~~

~~Wetlands shall be identified by survey by the applicant for a special management area permit at the time of the permit application on a site by site basis.]~~

**§ 25-2.3 Permits required for development.**

(a) All development within the special management area is subject to review under the provisions of this chapter, pursuant to the objectives, policies, and guidelines set forth in this chapter.

(b) A proposal is exempt from obtaining a permit if the director finds that the proposal is not development governed by this chapter.

(c) A special management area minor permit may be granted if the director finds that the development proposal:

(1) Has a valuation or fair market value not in excess of \$500,000; and

(2) Will not have significant adverse environmental or ecological effect, taking into account potential cumulative impacts and significant effects.

(d) A special management area major permit, approved by resolution of the council, is required for any development proposal that:



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- (1) Has a valuation or fair market value that exceeds \$500,000; or
- (2) May have significant adverse environmental or ecological effects, taking into account potential cumulative impacts and significant effects.

**ARTICLE 3: OBJECTIVES [~~AND~~], POLICIES, [~~REVIEW AND PROCEDURAL~~] AND GUIDELINES**

**§ 25-3.1 Objectives [~~and~~], policies[~~-~~], and guidelines.**

The objectives [~~and~~], policies, and guidelines of this chapter [~~shall be~~] are those contained in HRS [§] §§ 205A-2[~~-~~] and 205A-26(1). The objectives, policies, and guidelines summarized below are the basis for analysis of uses, activities, or operations within the special management area.

- (a) Recreational resources. Development within the SMA should provide coastal recreational opportunities to the public. Adequate access, by dedication or other means, to beaches, coastal dunes, recreation areas, and natural reserves must be provided to the extent consistent with sound conservation principles. Adequate and properly located public recreation areas and wildlife preserves must be preserved.
- (b) Historic and cultural resources. Development within the SMA should protect, preserve, and restore natural or human-made historical and cultural resources.
- (c) Scenic and open space resources. Development within the SMA should protect, preserve, and whenever desirable, restore or improve the quality of coastal scenic and open space resources. Alterations to existing land forms and vegetation, other than for the cultivation of coastal dependent crops, must be limited so they result in minimum adverse impacts on water resources, beaches, coastal dunes, and scenic or recreational amenities. Development that is not dependent on the coast is encouraged to locate mauka of the SMA.
- (d) Coastal ecosystems. Development within the SMA should protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes from disruption, and minimize adverse impacts on all coastal ecosystems. Solid and liquid waste treatment and disposition must be managed to minimize adverse impacts on SMA resources.



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- (e) *Economic uses.* Development within the SMA should consist of facilities and improvements important to the State's economy, and ensure that coastal-dependent development and coastal-related development are located, designed, and constructed to minimize exposure to coastal hazards and adverse social, visual, and environmental impacts within the SMA.
- (f) *Coastal hazards.* Development within the SMA should reduce impacts of coastal hazards on life and property, and must be designed to minimize impacts from landslides, erosion, sea level rise, siltation, or failure in the event of earthquake.
- (g) *Managing development and public participation.* The development review process should stimulate public awareness, education, and participation in coastal management.
- (h) *Beach and coastal dune protection.* Development within the SMA should facilitate beach management and protection by safeguarding beaches and coastal dunes for public use and recreation, the benefit of ecosystems, and use as natural buffers against coastal hazards. New structures should be located mauka of the shoreline setback line to conserve open space, minimize interference with natural shoreline processes, and minimize the loss of improvements due to erosion.
- (i) *Marine and coastal resources.* Development within the SMA should promote the protection, use, and development of marine and coastal resources to ensure that these resources are ecologically and environmentally sound and economically beneficial. Impacts on water resources, beaches, coastal dunes, and scenic or recreational amenities resulting from the construction of structures must be minimized. Development within wetland areas should be limited to activities that are dependent on or enhance wetlands, or are otherwise approved by appropriate State and federal agencies. Examples include traditional Hawaiian agricultural uses such as wetland taro production, aquaculture, and fishpond management, as well as activities that clean and restore traditional wetland areas or create new wetlands in appropriate areas.
- (j) *Cumulative impact or significant effect and compelling public interest.* Development within the SMA should not have any cumulative impact or significant effect, unless minimized to the extent practicable and clearly outweighed by public health, safety, or other compelling public interest.



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(k) Consistency with plans and regulations. Development within the SMA must be consistent with the general plan, development plans, sustainable communities plans, and zoning ordinances; provided that a finding of inconsistency does not preclude concurrent processing of amendments to applicable plans or a zone change.

~~§ 25-3.2 Review guidelines.~~

~~The following guidelines shall be used by the council or its designated 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 council 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 will minimize adverse effects upon special management area resources; and~~
  - ~~(D) Alterations to existing land forms and vegetation; except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.]~~

**ARTICLE 4: PERMIT REVIEW GUIDELINES**

**§ 25-4.1 Permit review guidelines.**

- ~~(2)(a)~~ (a) No development ~~[shall]~~ may be approved unless the agency or the council has first found that:
  - ~~(A) The]~~ the development is consistent with the objectives, policies, and guidelines set forth in this chapter and will not have any [substantial, significant adverse environmental;] or ecological effect, except [as such] for situations in which the adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or a



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~~compelling public interest. [Such adverse effect shall include but not be]~~  
Adverse effects include, but are not limited to the potential cumulative  
impact of individual developments, each [one] of which taken [in itself-  
might] by itself may not have a [substantial] significant adverse effect [and  
the elimination of]. Adverse effects may also involve development that  
would eliminate future planning [options;] options.

~~[(B)]~~ ~~The development is consistent with the objectives and policies set forth in~~  
~~§ 25-3.1 and area guidelines contained in HRS § 205A-26; and~~

~~[(C)]~~ ~~The development is consistent with the county general plan, development~~  
~~plans, and zoning. Such a finding of consistency does not preclude~~  
~~concurrent processing where a development plan amendment or zone~~  
~~change may also be required.]~~

~~[(3)]~~(b) The agency or council shall seek to minimize, ~~[where]~~ whenever reasonable:

~~[(A)]~~(1) Dredging, filling, or otherwise altering any bay, estuary, salt marsh,  
wetland, river mouth, slough, or lagoon[-]; except for restoration purposes;

~~[(B)]~~(2) Any development ~~[which]~~ that would reduce the size of any beach,  
coastal dune, or other area usable for public recreation;

~~[(C)]~~(3) Any development ~~[which]~~ that would reduce or impose restrictions upon  
public access to tidal and submerged lands, beaches, coastal dunes,  
portions of rivers and streams ~~[within the special management area,]~~ and  
the mean high tide line where there is no beach;

~~[(D)]~~(4) Any development ~~[which]~~ that would substantially interfere with or detract  
from the line of sight toward the ~~[sea]~~ ocean from the State highway  
nearest the coast; ~~[and]~~

~~[(E)]~~(5) 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, coastal ecosystems, wildlife  
habitats, or potential or existing agricultural uses of land[-]; and

(6) Risk to development from sea level rise and other coastal hazards, which  
may be accomplished by siting habitable structures outside of the sea  
level rise exposure area if feasible, or if not feasible adapting habitable  
structures within the sea level rise exposure area to accommodate sea  
level rise.



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~~[§ 25-3.3 — Procedural guidelines.~~

- ~~(a) — All development within the special management area shall be subject to review by the agency under the provisions of this chapter. Such review shall be pursuant to the objectives, policies and guidelines set forth herein.~~
- ~~(b) — Consultation. Any applicant contemplating development within the special management area is encouraged to contact the agency for information regarding procedures and general information which may have a direct influence on the applicant's proposed development.~~
- ~~(c) — Assessment requirements for special management area use permits.~~
- ~~(1) — Any proposed development within the special management area requiring a special management area use permit shall be subject to assessment by the agency in accordance with the procedural steps set forth in HRS Chapter 343. The director may allow the assessment to be conducted concurrently with the processing of the application for a special management area use permit.~~
- ~~(2) — The director may waive the requirements of subdivision (1) for any proposed development which has been assessed under the National Environmental Policy Act or under HRS Chapter 343, and for which a finding of no significant impact has been filed or a required EIS has been accepted.~~
- ~~(d) — Review criteria. The director shall review 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 significance criteria established by § 25-4.1.~~
- ~~(e) — Determination.~~
- ~~(1) — For the purposes of this chapter, other than special requirements for shoreline lots as provided in § 25-6.3, the director shall declare a development proposal exempt where the director finds that the proposal is not defined as development under § 25-1.3. No shoreline lot shall be exempt from the special requirements for shoreline lots.~~



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~~(2) The director shall issue a special management area minor permit where the director finds that the development proposal:~~

~~(A) Has a valuation or fair market value not in excess of \$500,000; and~~

~~(B) Will not significantly affect the special management area or special wetland area, or both.~~

~~The director shall grant, grant with conditions, or deny an application for a minor permit within 45 days of receipt of a completed application.~~

~~ARTICLE 4: SIGNIFICANCE CRITERIA AND PROCEDURES~~

~~§ 25-4.1 Significance criteria.~~

~~In reviewing and assessing the significance of a development, the director shall confine the director's criteria to the objectives, policies, and guidelines in Article 3.~~

~~§ 25-4.2 Procedures.~~

~~In processing an environmental assessment or environmental impact statement, the director shall adhere to the procedures set forth in HRS Chapter 343, and the regulations adopted under that chapter by the State environmental quality council. If a development is not subject to the chapter, but the director requires an EIS, filing shall be with the agency.]~~

~~ARTICLE 5: PERMIT PROCESSING PROCEDURES~~

~~§ 25-5.1 [Required Materials.] Information—Preliminary determination.~~

Any applicant contemplating development within the special management area may contact the agency for information regarding procedures and general information that may influence the applicant's proposed development. The applicant may request a special management area determination in which the applicant provides a summary of the proposal to the agency and the agency makes a preliminary determination about whether the proposal constitutes development for purposes of this chapter and whether an SMA permit is required.





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**§ 25-5.2 Special management area minor permit.**

(a) When a proposed development requires a special management area minor permit, ~~[an]~~ the applicant for the proposed development within the special management area will be responsible for submitting the following materials to the agency:

- (1) A completed application form (to be obtained from the agency)[:] that is filled out in accordance with the agency's application instructions;
- (2) A tax map key identification of the property on which the applicant proposes development;
- (3) A plot plan of the property, drawn to scale;
- (4) A written description of the proposed development, a statement of the objectives of the development, and an estimate of the valuation of the development;
- (5) A shoreline survey if ~~[the parcel abuts the shoreline, unless the proposed development is located inland of the waiver line established as provided in]~~ required by rules adopted by the director pursuant to HRS Chapter 91;
- (6) Any other relevant plans or information pertinent to the analysis of the development required by the agency; and
- (7) ~~[An]~~ The applicable application fee [according to the schedule set forth in subsection (c).] as specified in § 25-5.4.

~~[(b) When a proposed development requires a special management area use permit, an applicant for development within the special management area will be responsible for the following:~~

- ~~(1) Prior to submitting an application to the agency, presenting the project to the neighborhood board of the district where the project is located, or, if no such neighborhood board exists, an appropriate community association. The applicant shall provide written notice of such presentation to owners of all properties adjoining the proposed project. The requirements of this subdivision will be deemed satisfied if the applicant makes a written request to present the project to the neighborhood board or community association and;~~



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- ~~(A) The neighborhood board or community association fails to provide the applicant with an opportunity to present the project at a meeting held within 60 days of the date of the written request; or~~
- ~~(B) The neighborhood board or community association provides the applicant with written notice that it has no objection to the project or that no presentation of the project is necessary; and~~
- ~~(2) Submitting to the agency:
 
  - ~~(A) A completed application form (to be obtained from the agency);~~
  - ~~(B) The items set forth in subsections (a)(2) through (7);~~
  - ~~(C) A written description of the affected environment which addresses the development's technical and environmental characteristics;~~
  - ~~(D) Additional information that may be needed by the agency for determining the impacts of the proposed development on special wetland areas; and~~
  - ~~(E) (i) If the director allows concurrent processing of the assessment required by § 25-3.3(c)(1) and the application for the permit, a copy of either a draft environmental assessment or a draft environmental impact statement preparation notice.~~
    - ~~(ii) If the director does not allow concurrent processing of the assessment required by § 25-3.3(c)(1) and the application for the permit, a copy of either the final environmental assessment for which a finding of no significant impact has been issued, or a completed and accepted EIS.~~~~
- ~~(c) The application fee required by this section will be as set forth in the following schedule. Application fees are not refundable and shall be waived for city projects.
 
  - ~~(1) When a (major) special management area use permit application is submitted for processing, the application fee will be \$2,400, plus an additional \$600 per acre or major fraction thereof, up to a maximum of \$30,000.~~~~



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- ~~(2) — When a special management area minor permit application is submitted for processing, the application fee will be \$1,200.~~
- ~~(3) — When an environmental assessment or impact statement must be prepared as a prerequisite to a (major) special management area permit required by this chapter, and is submitted to the department of planning and permitting for processing as the accepting agency, there will be a processing fee of \$1,200 for an environmental assessment, and \$2,400 for an environmental impact statement.~~
- ~~(4) — When a (major) special management area use permit or minor permit application, or prerequisite environmental assessment or impact statement is submitted after the applicant's being cited for undertaking development without having obtained the necessary permit, the application fees, as specified in subdivisions (1), (2), and (3), will be doubled.~~
- ~~(5) — When an application for a minor modification to a (major) special management area use permit is submitted, the application fee will be \$200.~~
- ~~(6) — When an application for a (major) special management area use permit or minor permit, or a minor modification thereto, or a related environmental assessment or impact statement, is submitted for processing, there will be a nonrefundable application review fee to determine whether the application is complete or incomplete, as follows:
  - ~~(A) — Applications with a fee of \$2,400 or more will have an application review fee of \$400;~~
  - ~~(B) — Applications with a fee of \$1,200 will have an application review fee of \$200; and~~
  - ~~(C) — Applications with a fee of \$200 will have an application review fee of \$100.~~~~

~~When an application under this section has been accepted by the department of planning and permitting for processing, the application review fee for the submitted application will be counted as partial payment towards the total application fee for that submittal.~~



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~~(d) — When a request for a special management area determination is submitted, a nonrefundable review fee of \$150 will apply.~~

**~~Sec. 25-5.2 Acceptance.~~**

~~Upon compliance with the foregoing procedures, the director shall notify the applicant for a special management area use permit in writing within 10 working days of receipt of an application that either:~~

~~(1) — The application has been accepted; or~~

~~(2) — The application will be accepted within 10 working days of completion of the assessment required by § 25-3.3(e)(1), as determined by either the issuance of the finding of no significant impact or the acceptance of a final EIS.~~

~~If an application is incomplete, written notice from the director shall inform the applicant of the specific requirements necessary to complete the application. The application shall not be accepted unless it is complete. Upon acceptance of the application, the director shall also concurrently provide the council with written notice, including the date of acceptance of the application and a brief description of the proposal contained in the application.~~

**~~§ 25-5.3 Public hearings.~~**

~~(a) — The agency, pursuant to powers of delegation given to the council under HRS Chapter 205A, shall hold a public hearing on the application for a special management area use permit at a date set no less than 21 nor more than 60 calendar days after the date on which the application is accepted, unless the 60-day period is waived by the applicant. The agency shall give adequate notice to the pertinent neighborhood boards, the owners of all property within 300 feet of the affected property as well as to all owners of all property described in the application. The agency shall give written notice, once in a newspaper of general circulation in the county and once in a newspaper of general circulation in the State, at least 20 calendar days in advance. The notice shall state the nature of the proposed development for which a permit application is made and of the time and place of public hearings.~~

~~(b) — The public hearing shall be held in the area in which the development is proposed. Whenever possible, the public hearing shall be held jointly and concurrently with any other hearing required for the same development.~~



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~~§ 25-5.4 Agency recommendation.~~

~~The agency shall transmit its findings and recommendations on the application for a special management area use permit to the council for its consideration and decision within 20 working days of the close of the public hearing, unless the assessment required by § 25-3.3(c)(1) has not been completed, in which case the deadline for transmitting the findings and recommendations to the council shall be within 10 working days of either the issuance of the finding of no significant impact or the acceptance of a final EIS. This transmittal deadline may be extended if agreed to by the applicant.~~

~~§ 25-5.5 Action by council.~~

~~The council shall grant, grant with conditions, or deny any application for a special management area use permit within 60 calendar days after receipt of the agency's findings and recommendations thereon. If the council does not act on the application as provided in this section within such 60-day period, the application shall be deemed denied. The applicant may request, and the council may approve, an extension of time if the request is made in writing and approved before the requested effective date of the extension.]~~

(b) Upon receipt of an application and applicable fees, the director shall review the application for completeness. Within 10 working days after receipt of an application, the director shall provide the applicant with written notice that:

- (1) The application is deemed complete and has been accepted for processing; or
- (2) The application is incomplete and has been rejected, with a statement of the specific requirements necessary to complete the application.

(c) If the director determines the development satisfies the review criteria identified in § 25-4.1, the director shall grant or grant with conditions a special management area minor permit within 45 calendar days after acceptance of a completed application. The director may extend the deadline for an additional 45 calendar days should revised plans or application materials be submitted by the applicant or when additional application materials are deemed necessary during the director's analysis of the proposal. The director may grant an additional deadline extension of 30 calendar days on request of the applicant, as necessary.



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(d) If the director determines the development is likely to have significant adverse environmental or ecological effects, taking into account potential cumulative effects, the director shall deny the application and the applicant may seek a special management area major permit.

**§ 25-5.3 Special management area major permit.**

When a proposed development requires a special management area major permit, the following procedures apply.

(a) Except for one-family and two-family detached dwellings on a single zoning lot, the applicant shall prepare the applicable environmental disclosure document, which will be processed in accordance with the procedures set forth in HRS Chapter 343 and the rules adopted thereunder. The department of planning and permitting will act as the accepting agency for purposes of HRS Chapter 343; provided that if another agency proposes the action and is preparing the environmental disclosure document, that agency shall act as the accepting agency. The director may allow the application for an SMA major permit application to be processed concurrently with the preparation of the applicable environmental disclosure document.

(b) Prior to submitting an SMA major permit application to the agency, the applicant shall present the project to the neighborhood board of the district where the project is located or, if no such neighborhood board exists, an appropriate community association. The applicant shall provide written notice of the presentation to owners of all properties adjoining the proposed development. The requirements of this subsection will be deemed satisfied if the applicant makes a written request to present the proposed development to the neighborhood board or community association and:

(1) The neighborhood board or community association fails to provide the applicant with an opportunity to present the proposed development at a meeting held within 60 days after the date of the written request; or

(2) The neighborhood board or community association provides the applicant with written notice that it has no objection to the proposed development or that no presentation of the project is necessary.

(c) Upon issuance of a finding of no significant impact or acceptance of the environmental disclosure document, and after the applicant has met the requirements of subsection (b), the applicant may submit a special management area major permit application to the agency.



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- (d) The applicant shall submit to the agency:
- (1) All application materials that would be required for the special management area minor permit as specified in § 25-5.2;
  - (2) A copy of the final environmental disclosure document; and
  - (3) The applicable application fee specified in § 25-5.4.
- (e) Upon receipt of an application, the director shall review the application for completeness. Within 10 working days after receipt of an application, the director shall provide the applicant with written notice that:
- (1) The application is deemed complete and has been accepted for processing; or
  - (2) The application is incomplete and has been rejected, with a statement of the specific requirements necessary to complete the application.
- (f) The agency shall hold a public hearing on the application at a date set not less than 21 nor more than 60 calendar days after the date the application was accepted as complete; provided that the period may be extended if agreed to by the applicant. The public hearing may be held in the area in which the development is proposed.
- (g) Notice of the public hearing must be published in a newspaper of general circulation in the State at least 20 calendar days prior to the date of the public hearing.
- (h) The agency shall provide adequate written notice of the public hearing to:
- (1) Pertinent neighborhood boards or community associations;
  - (2) Owners of all property within 300 feet of the affected property; and
  - (3) Owners of all property described in the application.
- (i) The agency shall transmit its findings and recommendations on the application for a special management area major permit to the council for its consideration and decision within 45 calendar days after the close of the public hearing; provided that this transmittal deadline may be extended if agreed to by the applicant.



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(i) The council shall grant, grant with conditions, or deny any application for a special management area major permit within 60 calendar days after receipt of the agency's findings and recommendations thereon. If the council does not act on the application as provided in this section within the 60-day period, the application will be deemed denied. The applicant may request, and the council may approve, an extension of time if the request is made in writing and approved by the council prior to the expiration of the previous deadline for council action.

**§ 25-5.4 Fees.**

(a) The following table sets forth application review and processing fees. The review fees cover the costs of determining whether an application is complete or incomplete, and are not refundable.

<u>Submittal Type</u>	<u>Review Fee</u>	<u>Processing Fee</u>	<u>Total Fee</u>
<u>Environmental Assessment</u>	<u>\$200</u>	<u>\$1,200</u>	<u>\$1,400</u>
<u>Environmental Impact Statement</u>	<u>\$400</u>	<u>\$2,400</u>	<u>\$2,800</u>
<u>Special Management Area Minor Permit</u>	<u>\$200</u>	<u>\$1,200</u>	<u>\$1,400</u>
<u>Special Management Area Major Permit</u>	<u>\$400</u>	<u>\$2,400 plus an additional \$600 per acre or major fraction thereof, up to a maximum of \$30,000</u>	<u>\$2,800 plus an additional \$600 per acre or major fraction thereof, up to a maximum of \$30,000</u>
<u>Modification of a Special Management Area Major Permit</u>	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
<u>Special Management Area Determination</u>	<u>none</u>	<u>\$150 per tax map key</u>	<u>\$150 per tax map key</u>





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<u>Confirmation of Nonconformity or Site History and Status</u>	<u>none</u>	<u>\$300 per tax map key</u>	<u>\$300 per tax map key</u>
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- (b) When an application is submitted, it must include all required fees. The nonrefundable application review fee will immediately be applied to the review of the application. When an application has been accepted for processing, the application review fee for the application will be counted as partial payment towards the total fee. If the application is determined to be incomplete, the processing fee will be returned.
- (c) Review fees and processing fees must be doubled for permits and environmental disclosure documents submitted after a citation has been issued for the activity or construction.
- (d) Review fees and processing fees must be doubled for permits and environmental disclosure documents submitted after the proposed work is completed.
- (e) The director may waive the fees in this section for city projects.

**ARTICLE 6: [PROHIBITIONS] REQUIRED CONDITIONS**

**~~§ 25-6.1 Permit Required.~~**

~~No development or structure shall be constructed within the special management area without first obtaining a special management area use permit, a minor permit or being exempted pursuant to the provisions of this chapter.~~

**~~§ 25-6.2 Permit to precede other permits.~~**

~~No agency authorized to issue permits pertaining to any development within the special management area established by this chapter shall authorize any development, unless approval is first received pursuant to the provisions of this chapter. For purposes of this section, county general plans, development plans, State land use district boundary amendments, and zoning changes are not permits.~~

**~~§ 25-6.3 Special requirements applicable to shoreline lots.]~~**



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**§ 25-6.1 Conditions for all development.**

The following requirements ~~[shall]~~ apply to all uses, ~~[structures, and improvements on any shoreline lot.]~~ activities, or operations within the special management area, even if the proposal is not considered development as defined in this chapter.

(a) *Exterior Lighting.* All exterior lighting on a shoreline lot ~~[shall]~~ must be shielded to reduce the possibility that seabirds and other marine life forms may become disoriented and harmed by the lighting. Shielded exterior lighting ~~[shall]~~ must be implemented both during and after any construction work on a shoreline lot. Any wall-mounted exterior lighting on buildings on a shoreline lot ~~[shall]~~ must be shielded by wall directors or other acceptable shielding, and all shielding ~~[shall]~~ must be specified on building permit plans. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes on a shoreline lot ~~[shall be]~~ are prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline or ocean waters, or both, except as may otherwise be permitted by HRS Section 205A-71(b).

(b) *Landscaping.* All landscaped areas, landscaping, and irrigation on or for any shoreline lot ~~[shall]~~ must be contained and maintained within the property boundaries of the shoreline lot of origin, and ~~[shall under no circumstances extend:]~~ may not:

~~[(A)]~~(1) Be planted, watered, and maintained so that they act as a shoreline hardening barrier, such as naupaka, particularly if they alter or interfere with the natural beach processes;

(2) ~~[Seaward]~~ Extend seaward of the shoreline as depicted on the current certified shoreline survey for the shoreline lot~~[-or-]~~, or in the event there is no current certified shoreline survey for the lot, seaward of the presumed shoreline; and

~~[(B)]~~(3) ~~[into]~~ Extend into any adjoining beach access right-of-way, public~~[-]~~ or private.



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**ARTICLE 7: EXEMPTIONS**

**§ 25-7.1 Emergency permits.**

- (a) In cases of emergency repairs to existing public utilities, including but not limited to flood control structures, highways, and water, sewer, gas and electric transmission lines [~~and highways~~], the respective governmental agency or public utility company is exempt from obtaining a special management area use permit pursuant to the requirements of this chapter. Two reports on [~~such~~] the repair projects [~~shall~~] must be recorded with the agency, [~~one~~] the first within three days after the start of the project and the [~~other~~] second upon [~~its~~] the project's completion.
- (b) In the event an impending disaster or disaster has been declared under Chapter 2, Article 25A[~~as amended~~], or under HRS [~~Chapters 127 and 128~~] Chapter 127A, the requirements of this chapter [~~shall~~] will be waived.

**ARTICLE 8: PENALTIES**

**§ 25-8.1 Civil fine.**

Any person who violates this chapter [~~shall~~] will, upon notice issued pursuant to § 25-9.1, be deemed to have committed a civil violation and [~~shall~~] will be subject to a civil fine not to exceed [~~\$10,000~~] \$100,000.

**§ 25-8.2 Additional fines.**

In addition to any other penalties, any person who [~~performs~~] undertakes any development in violation of this chapter [~~shall~~] will, upon notice issued pursuant to § 25-9.1, be deemed to have committed a civil violation and [~~shall~~] will be subject to a civil fine not to exceed [~~\$500 a~~] \$10,000 per day for each day in which [~~such~~] the violation persists.

**§ 25-8.3 Additional penalties for special wetland areas.**

In the event of a violation of the wetlands rules adopted pursuant to [~~this chapter~~] Article 11, the director [~~shall, when possible, and in~~] may, after consultation with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, order wetland restoration [and], creation [measures for], or other appropriate mitigating measures be undertaken by the applicant to address and correct, to the extent possible, the damaged or destroyed wetland areas.



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**ARTICLE 9: ENFORCEMENT**

**§ 25-9.1 Notice of violation and order.**

If the director determines that any person is violating this chapter, any rule adopted thereunder, or any permit issued pursuant thereto, the director may have the person served ~~[, by mail or delivery,]~~ with a notice of violation and order. A notice of violation and order must be served upon responsible persons ~~[either personally or by certified mail. However,]~~ provided that if the whereabouts of such persons are unknown and ~~[the same cannot be ascertained by]~~ the director ~~[in the exercise of]~~ is not able to ascertain the whereabouts of such persons after exercising reasonable diligence [and the director provides], the director shall provide an affidavit to that effect ~~[, then a].~~ The notice of violation and order [may] must be served [by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city] pursuant to [HRS § 1-28.5.] the requirements of the agency's administrative rules, or other relevant legal authority.

(a) *Contents of the notice of violation.* ~~[The]~~ At a minimum, the notice [shall] must include ~~[at least]~~ the following information:

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

(b) *Contents of the order.*

- (1) The order may require the person do any or all of the following:
  - (A) Cease and desist from the violation;
  - (B) Correct the violation at the person's own expense before a date specified in the order;
  - (C) Pay a civil fine per recurring incident not to exceed ~~[\$10,000]~~ \$100,000 each, in the manner, at the place, and before the date specified in the order;



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- (D) Pay a civil fine not to exceed ~~[\$1,000]~~ \$10,000 per day 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]~~ undertaken any development in violation of this chapter;
- (E) In the event of a violation of the wetlands rules adopted pursuant to this chapter, the director ~~[shall have the power to order wetland restoration and creation measures for the damaged or destroyed wetland area by the person or agent responsible for the violation.]~~ may pursue the remedies specified in § 25-8.3. If the responsible party does not complete ~~[such]~~ the measures specified in the order within ~~[a reasonable time following]~~ the time frame set forth in the order, the city may restore the affected wetland to its prior condition, and create or restore other wetlands for the purpose of offsetting losses sustained as a result of the violation. The order may require that the person or agent responsible for the original violation ~~[shall]~~ be liable to the city for the cost of such actions~~[-];~~;
- (F) To guide restoration and creation actions, the agency ~~[shall have the power to]~~ may order the violator to develop a plan as described in the rules adopted pursuant to ~~[this chapter]~~ Article 11 for ~~[the]~~ approval ~~[of]~~ by the agency; or
- ~~[(F)]~~(G) Appear before the director at a time and place specified in the order and answer the charges specified in the notice of violation.
- (2) The order ~~[shall]~~ must advise the person of the finality of the order 20 days after the date of its ~~[mailing or delivery,]~~ service, unless a written request for a hearing is mailed or delivered to the director ~~[within those 20 days.]~~ prior to expiration of the 20-day period specified in § 25-9.2(a).

**§ 25-9.2 Effect of order—Right to hearing.**

- (a) The provisions of the order issued by the director under § 25-9.1 ~~[shall]~~ will become final 20 days after the date ~~[of]~~ the ~~[mailing or delivery of the order,]~~ person is served, unless within those 20 days the person subject to the order requests in writing a hearing before the director. The request for a hearing ~~[shall]~~ will be considered timely if the written request is delivered or mailed and postmark dated to the director within ~~[these 20 days.]~~ the 20-day period.



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(b) Upon receipt of ~~the~~ a written request for a hearing, the director shall specify a time and place for the person subject to the order to appear and be heard. The hearing ~~shall~~ will be conducted by the director in accordance with the provisions of HRS Chapter 91. Following the hearing, the director, at the director's discretion, may affirm, modify, or rescind the order ~~[as in the opinion of the director may be appropriate]~~.

§ 25-9.3 Judicial enforcement of order.

The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to §§ 25-9.1 and 25-9.2. ~~[Where the]~~ If a civil action has been instituted to enforce ~~the~~ a civil fine imposed by the order, the director need only show that a notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such a request, ~~the~~ a civil fine was imposed, and ~~that~~ the fine imposed has not been paid.

§ 25-9.4 Judicial enforcement of chapter.

~~[The]~~ In addition to any other remedy provided for under this chapter, the director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto ~~[in addition to any other remedy provided for under this chapter]~~.

§ 25-9.5 Nonexclusiveness of remedies.

The remedies provided in this chapter for enforcement of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto ~~shall be~~ are in addition to any other remedy as may be provided by law.

§ 25-9.6 Involuntary revocation or modification of permits.

- (a) A special management area ~~use~~ major permit or a special management area minor permit may be revoked or modified without the consent of the permittee for any of the following reasons:
  - (1) The permit was granted in violation of HRS Chapter 205A or this chapter;
  - (2) A material breach of the terms of the permit has occurred;
  - (3) A material violation of HRS Chapter 205A or of this chapter following the granting of the permit has occurred;



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- (4) A material mistake of fact or a material misrepresentation was made by the permit applicant in the application or otherwise made by the applicant to the agency or the council [~~in relation~~] relating to the permit application;
  - (5) A material mistake of fact was made by the council in the issuance of the permit [~~such~~] so that the findings required to be made by the council as a prerequisite to the issuance of a permit under HRS § 205A-26 and [~~ROH § 25-3.2(2)~~] § 25-4.1 were erroneous; or
  - (6) A material change in circumstances has occurred following the issuance of the permit that would cause the development, as approved and conditioned in the permit, to pose a [~~substantial~~] significant threat to public health or safety, as determined by the State department of health, the State department of labor[;] and industrial relations, the U.S. Army Corps of Engineers, the U.S. Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard, or any other State or federal agency having jurisdiction over the development or with respect to the type of health or safety threat posed by the development.
- (b) The revocation or modification of a special management area minor permit [~~shall~~] will be processed in accordance with rules adopted by the agency.
  - (c) The agency may initiate the revocation or modification of a special management area [~~use~~] major permit without the consent of the permittee [~~may be initiated by the agency pursuant to this subsection or by the council pursuant to subsection (d), and, in the case of a revocation or modification proposed by the agency, shall be processed~~] as follows.
    - (1) Upon determining that adequate reasons may exist under subsection (a) for the revocation or modification of a special management area [~~use~~] major permit, the agency shall hold a public hearing on the proposed revocation or modification on a date set [~~no~~] not less than 21 nor more than 60 days [~~following the date of sending the notice~~] after the date on which the notice of revocation or modification is mailed to the permittee pursuant to subdivision (2).
    - (2) The agency shall give written notice of revocation or modification of a special management area major permit to the permittee and any disclosed owner of record of the property that is subject to the permit [~~shall be given written notice by the agency of the~~]. The notice must include the following information:



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- (A) The permit proposed to be revoked or modified [(by), identified by council resolution number and title[-if any); the];
- (B) The date, time, place, and nature of the hearing; [the]
- (C) The reasons for the proposed revocation or modification; and [in]
- (D) In the case of a proposed modification, the nature of the modification proposed.

~~[The notice shall also contain such other matters as are prescribed in HRS § 91-9 with respect to notice of contested case hearings. This notice shall be sent by registered or certified mail with return receipt requested addressed to the permittee and disclosed owners of record at the addresses stated in the application for a special management area use permit or at addresses otherwise specified in a written request to the agency from the permittee or such owners.]~~

- (3) The agency shall give written notice[-] of the proposed revocation or modification of a special management area major permit, by publication once in a newspaper of general circulation in the city and once in a newspaper of general circulation in the State, [at least 20, but not more than 60, calendar days in advance of the] not less than 21 nor more than 60 days prior to the date of the public hearing. The notice [shall] must state the following:
  - (A) The location of the affected property by tax map parcel number or street address, or if neither exists, by a general statement of its location[-The notice shall also state the];
  - (B) The permit [being] proposed to be revoked or modified [(by), identified by council resolution number and title[-if any); the];
  - (C) The date, time, place, and nature of the hearing; [and the]
  - (D) The reasons for the proposed revocation or modification; and[-in]
  - (E) In the case of a proposed modification, the nature of the modification proposed.





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- (4) ~~[Notice]~~ The agency shall give written notice of the proposed [permit] revocation or modification of a special management area major permit containing the information set forth in subdivision (3) [shall be given by the agency] to any pertinent neighborhood boards or community associations, and make a good faith effort [shall be made] to give [such] notice to the owners of all property within 300 feet of the affected property; provided that if [any such] the property is subject to condominium property regime, notice [shall be adequate if it is] may be given to the association of apartment owners of the condominium project.
- (5) In conducting the public hearing, the agency shall provide an opportunity ~~[to] for~~ all parties to provide ~~[evidence and argument]~~ testimony on all issues involved. The agency may adopt rules pursuant to HRS Chapter 91 with respect to the conduct of hearings under this subsection.
- (6) Following the public hearing, the agency shall prepare a written report ~~[thereon]~~ with its findings and ~~[recommendations]~~ recommendation and, if the report recommends revocation or modification, submit the report and a draft ~~[of a resolution to implement the recommendations of the report]~~ resolution implementing the agency's recommendation to the council within 30 calendar days ~~[of]~~ after the close of the public hearing. For each of the reasons for ~~[proposed]~~ the revocation or modification included in the notice ~~[given]~~ provided under subdivision (2), the report ~~[shall]~~ must state whether the evidence presented at the public hearing supported or did not support revocation or modification for that reason. The report ~~[shall]~~ must include a recommendation that the permit be revoked, that the permit not be revoked, or that the permit be modified[-] and, in the case of a proposed modification, the nature of the proposed modification.
- (d) ~~[(4)]~~ The council may initiate the ~~[modification or]~~ revocation or modification of a special management area ~~[use]~~ major permit without the consent of the permittee by resolution[-] as follows:
  - ~~[(2)](1)~~ The resolution [shall] must set forth the following:
    - (A) The permit ~~[being]~~ proposed to be ~~[modified or revoked,-]~~ revoked or modified, identified by council resolution number and title[-, if any];
    - (B) The reasons for the proposed ~~[modification or revocation, stated in terms giving notice as to]~~ revocation or modification, identifying which of the permissible reasons ~~[for modification or revocation]~~ set forth in subsection (a) are applicable;



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(C) In the case of a proposed modification, the nature of the proposed modification; and

(D) A direction to the agency to process the proposed ~~modification or~~ revocation or modification in accordance with this section.

~~[(3)]~~(2) After adoption of the resolution, the city clerk shall transmit the resolution to the agency for processing.

~~[(4)]~~(3) Upon receiving the resolution, the agency shall conduct an initial investigation into the reasons set forth in the resolution for ~~modification or~~ revocation or modification of the special management area ~~use~~ major permit and, within 60 days of receipt of the resolution, the agency shall give the permittee and any disclosed owner of record of the property that is subject to the permit, written notice of a hearing on the proposed ~~modification or revocation.~~ revocation or modification. The written notice ~~shall~~ must meet the notice requirements of subsection (c)(2)~~[-The written notice shall],~~ and must include the reasons for the proposed ~~modification or~~ revocation or modification set forth in the resolution ~~[and, in addition,]~~ and any other ~~or further~~ reasons for ~~modification or~~ modification the agency may have ~~[discovered, either]~~ identified during its initial investigation or otherwise.

~~[(5)]~~(4) The agency shall hold a public hearing on the proposed revocation or modification on a date set ~~no~~ not less than 21 nor more than 60 days following the date of sending the notice to the permittee and others pursuant to subdivision ~~[(4)]~~ (3).

~~[(6)]~~(5) The agency shall give written notice of the hearing~~[-]~~ and conduct the hearing~~[-, and prepare a report on the hearing, all]~~ in accordance with subsections (c)(3), (c)(4), and (c)(5)~~[-, and (c)(6)].~~ ~~[Notwithstanding subdivision (c)(6), the agency shall transmit with the report a draft of a resolution to implement the recommendation of the report, whether or not the report recommends revocation or modification of the permit.]~~

(6) Following the public hearing, the agency shall prepare and submit to the council a written report and transcript of the public hearing within 30 calendar days after the close of the public hearing. If the agency recommends revocation or modification, the report must include a draft resolution implementing the agency's recommendation.



**A BILL FOR AN ORDINANCE**

- (e) The council may, by resolution, revoke, refuse or decline to revoke, or modify ~~the~~ a special management area ~~use~~ major permit within 90 calendar days ~~of~~ after receipt of the agency's report and draft resolution; provided that ~~any~~ council adoption of a resolution for revocation or modification of ~~the~~ a special management area ~~use~~ major permit ~~shall require for its adoption~~ requires the affirmative vote of at least two-thirds of the entire membership of the council. If the council fails to act within 90 calendar days of receipt of the report and draft resolution, the permit ~~shall~~ will be deemed not to have been revoked or modified and the resolution ~~shall~~ will be deemed to have been filed; provided that~~;~~ pursuant to a written request from the permittee, the council may ~~extend~~ approve an extension of this 90-day period.
  
- (f) ~~Following~~ After the filing ~~or deemed filing~~ of a resolution proposing ~~the revocation or modification of~~ to revoke or modify a special management area ~~use~~ major permit, no further resolution may be introduced proposing ~~the revocation or modification of~~ to revoke or modify the same permit for the same reasons that were stated in the resolution that has been filed~~;~~ except; provided that a further resolution may be introduced no earlier than six months following the filing of the initial resolution~~;~~ if a substantial change in circumstances has occurred following the filing of the initial resolution that would cause the development, as approved and conditioned in the permit, to pose a ~~substantial~~ significant threat to public health or safety, as determined by the State department of health, the State department of labor~~;~~ and industrial relations, the U.S. Army Corps of Engineers, the U.S. Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard, or any other State or federal agency having jurisdiction over the development or the type of health or safety threat posed by the development.
  
- ~~(f)(g)~~ (g) The council may revoke or modify a permit pursuant to this section only for one or more of the reasons specified in subsection (a). The council shall, ~~before~~ prior to revocation or modification of the permit, set forth written findings of fact and conclusions of law justifying the revocation or modification. If the council revokes a permit without the consent of the permittee based upon a material mistake of fact or a material change in circumstances, it must first find that the mistake or change in circumstances cannot be adequately addressed by a reasonable modification to the permit. The findings of fact and conclusions required under this subsection may be incorporated into either the final resolution or a separate document adopted by the council.



**A BILL FOR AN ORDINANCE**

~~[(g)]~~(h) Before a permit may be revoked or modified pursuant to this section, the council must first ~~[have held]~~ hold a public hearing on the proposed revocation or modification, at which ~~[it has provided]~~ the permittee, any disclosed owner of the subject property, and the agency have an opportunity to provide oral testimony of not less than one-half hour ~~[apiece.]~~ each. All other interested parties ~~[shall]~~ must also be given an opportunity to provide oral testimony in accordance with council rules. The permittee, ~~[the]~~ agency, and other interested parties may provide additional oral testimony in accordance with council rules at any council or council committee meetings at which the revocation or modification may be considered. Written testimony may also be provided by any interested party.

~~[(h)]~~(i) In conjunction with the written notice of agency hearing, or by written request from the council sent by registered or certified mail with postage prepaid and return receipt requested sent at least 10 days in advance of the date of ~~[the]~~ a council public hearing, the agency or the council may request the permittee to provide information at or before the agency hearing or the council public hearing, respectively, relating to:

- (1) The current status of all other permits or governmental approvals necessary for the development approved by the special management area ~~[use]~~ major permit;
- (2) The status of the permittee's compliance with or progress toward compliance with any conditions of the permit; and
- (3) The level and timing of expenditures made by the permittee or others with respect to various phases or aspects of the development.

The agency and the council ~~[shall be entitled to, but need not,]~~ may rely upon the accuracy of the information provided by the permittee in any action or proceeding to ~~[modify or]~~ revoke or modify the special management area ~~[use]~~ major permit. If the permittee fails or refuses to provide requested information, the agency or the council ~~[, as the case may be, shall be entitled to]~~ may find that there has been no progress towards compliance with permit conditions or that no expenditures have been made on the development.

~~[(h)]~~(i) The corporation counsel shall, upon request of the agency or the council, advise the agency or the council with respect to the extent to which the permittee's rights to construct the development or ~~[a portion of the development]~~ portion thereof may be vested under law.



A BILL FOR AN ORDINANCE

~~[(+)](k)~~ Any expenditures made by the permittee or others on a development for which a special management area ~~[use]~~ major permit ~~[or a special management area minor permit]~~ has been issued following:

(1) The receipt, by the party making the expenditure, of notice of the proposed ~~[modification or]~~ revocation or modification of the special management area ~~[use]~~ major or minor permit for the development; or

(2) The first published notice of the agency hearing;

whichever first occurs, and before the adoption ~~[- filing, or deemed filing]~~ or filing of the resolution proposing the ~~[modification or revocation, shall not be]~~ revocation or modification is not deemed an expenditure made in good faith reliance upon the issuance of the permit for purposes of determining whether development rights are vested.

~~[(+)](l)~~ For purposes of this section, a ~~["modification"]~~ modification to a permit includes but is not limited to a modification to the plans for the development or a modification to the conditions imposed upon the development in the permit.

~~[(+)](m)~~ An owner of record of property shall be deemed to have been disclosed if a permit applicant, permittee, or ~~[the]~~ owner gave notice to the agency of the owner's status either at the time of the permit application or through a formal written notice to the agency of such ownership status at least one week prior to the date on which the agency is required to give notice to disclosed owners of record.

**§ 25-9.7 Voluntary revocation or modification of permits.**

(a) A special management area ~~[use]~~ major permit or a special management area minor permit may be revoked or modified at the request of the permittee in accordance with this section.

(b) An application for the ~~[modification or]~~ revocation or modification of a special management area minor permit ~~[shall]~~ will be processed in the same manner as an application for the granting of a special management area minor permit; provided that the agency may adopt rules pursuant to HRS Chapter 91 providing for processing of the application for ~~[modification or]~~ revocation or modification in a different manner.



**A BILL FOR AN ORDINANCE**

- (c) An application for the ~~[modification or]~~ revocation or modification of a special management area ~~[use] major~~ permit ~~[initiated by the permittee shall]~~ will be processed in the same manner as an application for the granting of a special management area ~~[use] major~~ permit; provided that if a permit proposed for modification provides a different process for minor modifications to the permit, that process may be followed for minor modifications.

**ARTICLE 10: APPEALS**

**§ 25-10.1 Appeal in accordance with State statute.**

If any person is aggrieved by ~~[the]~~ an order issued by the director pursuant to §§ 25-9.1 and 25-9.2, the person may appeal the order in the manner provided in HRS Chapter 91; provided that no provision of ~~[such]~~ the order shall be stayed on appeal, unless specifically ordered by a court of competent jurisdiction.

**ARTICLE 11: RULES**

**§ 25-11.1 ~~[Wetlands rules.]~~ Rules.**

~~[The director may adopt rules pursuant to HRS Chapter 91 and not inconsistent with the provisions of this chapter, relating to wetlands within the special management area, including but not limited to rules establishing standards for development and for permits for development in special wetland areas; additional special management area permit application requirements and review criteria relating to wetlands standards for nonconforming activities in special wetland areas; standards for determining the existence and boundaries of special wetland areas; additional penalties and enforcement provisions relating to violations of the wetlands rules or special management area use permit conditions relating to wetlands, including standards for requiring wetlands restoration or creation and alternatives thereto; and standards for inclusion of wetlands conditions in special management area use permits.]~~ The agency shall adopt rules pursuant to HRS Chapter 91 to implement this chapter and HRS Chapter 205A, Part II.

**~~[ARTICLE 12. SEVERABILITY~~**

**~~§ 25-12.1 Invalid provisions.~~**

~~If this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of conditions of this chapter, which can be given effect without the invalid provision or application, and to this end, this chapter is severable.]"~~



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

23 - 4

ORDINANCE \_\_\_\_\_

BILL 42 (2022), CD2

**A BILL FOR AN ORDINANCE**

SECTION 4. This ordinance takes effect upon its approval; provided that:

1. This ordinance does not affect any special management area use permit or minor permit that had been issued prior to the effective date of this ordinance; and
2. All special management area use permit or minor permit applications received prior to the effective date of this ordinance and deemed complete for processing by the Department of Planning and Permitting must be processed in accordance with Chapter 25 of the Revised Ordinances of Honolulu 2021, as it read prior to the effective date of this ordinance.

INTRODUCED BY:

Tommy Waters (br)

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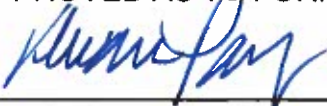
DATE OF INTRODUCTION:

June 23, 2022

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:



Deputy Corporation Counsel  
**DUANE W.H. PANG**

APPROVED this 9th day of March, 2023.



**RICK BLANGIARDI**, Mayor  
City and County of Honolulu

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

**BILL 42 (2022), CD2**

Introduced: 06/23/22 By: TOMMY WATERS - BY REQUEST Committee: PLANNING AND THE ECONOMY (P&E)

Title: RELATING TO THE SPECIAL MANAGEMENT AREA.

Voting Legend: \* = Aye w/Reservations

06/23/22	INTRO	Introduced.
07/06/22	CCL	Passed first reading.  9 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS
08/25/22	ZP	Reported out for passage on second reading and scheduling of a public hearing as amended in CD1 form.  CR-228  4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
08/26/22	PUBLISH	Public hearing notice published in the Honolulu Star-Advertiser.
09/07/22	CCL/PH	Committee report adopted. Bill passed second reading as amended, public hearing closed and referred to committee.  9 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS
09/14/22	PUBLISH	Second reading notice published in the Honolulu Star-Advertiser.
09/22/22	ZP	Postponed to a date and time to be determined by the Committee Chair.  4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
11/08/22		Councilmember Carol Fukunaga, representing Council District VI, resigned from office. [Refer to Communication CC-339(22)]  Councilmember Brandon J.C. Elefante, representing Council District VIII, resigned from office. [Refer to Communication CC-338(22)]
11/29/22	CCL	Tyler Dos Santos-Tam was appointed to fill a vacancy in the Office of Councilmember for Council District VI. (Refer to RES22-272)  Val A. Okimoto was appointed to fill a vacancy in the Office of Councilmember for Council District VIII. (Refer to RES22-273)
02/09/23	P&E	Reported out for passage on third reading as amended in CD2 form.  CR-33(23)  4 AYES: CORDERO, KIA'ĀINA, OKIMOTO, WEYER  1 EXCUSED: SAY



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02/22/23 CCL

Committee report adopted and Bill passed third reading as amended.

9 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, OKIMOTO, SAY, TULBA,  
TUPOLA, WATERS, WEYER

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.



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GLEN I. TAKAHASHI, CITY CLERK



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TOMMY WATERS, CHAIR AND PRESIDING OFFICER

**County of Hawaii Rule 8 Shoreline Setback Variance**

- § 8-3 Definitions
- § 8-10 Waiver of public hearing and action
- § 8-11 Criteria for approval of a variance

**County of Hawaii Rule 9 Special Management Area**

- § 9-4 Definitions
- § 9-11 Special management area use permit procedures

## **COUNTY OF HAWAI'I PLANNING DEPARTMENT BACKGROUND AND RECOMMENDATION**

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### **INITIATOR: PLANNING DIRECTOR AMENDMENTS TO PLANNING COMMISSION RULE 9 (SMA)**

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The Planning Director is initiating amendments to Planning Commission (Commission) Rule 8 regarding the Shoreline Setback and Planning Commission Rule 9 regarding the Special Management Area (SMA) to conform with Act 16, which amended Chapter 205A, Hawai'i Revised Statutes (HRS) regarding the Special Management Area and Shoreline Setbacks. On September 15, 2020, the Hawai'i State Legislature enacted Act 16 in order to strengthen coastal zone management policy to protect state beaches and to reduce residential exposure to coastal hazards. The proposed major amendments to Commission Rule 8 and 9 seek to add sea level rise to the definition of coastal hazards, adds a definition of beach to enhance beach protection, restricts construction of shoreline hardening structures at sites with beaches, increases the minimum shoreline setback from 20 feet to 40 feet and includes the construction of a single family residence on a shoreline parcel as "development".

In addition to the amendments to Commission Rule 8 and 9, the Planning Director is amending Planning Department (Department) Rule 11 regarding the Shoreline Setback to conform to Act 16. Since Chapter 205A-43, HRS provides the authority for establishing the shoreline setback line and enforcing shoreline setbacks to the Department, rather than the Commission, the changes to Department Rule 11 do not require approval by the Commission. The draft rule amendments are being provided to the Commission for their information and feedback prior to the rule being adopted by the Planning Director.

#### **PLANNING DEPARTMENT EXHIBITS:**

- **Planning Department Exhibit 1- Act 16**
- **Planning Department Exhibit 2- Draft Amendments to Commission Rule 8**
- **Planning Department Exhibit 3- Draft Amendments to Commission Rule 9**
- **Planning Department Exhibit 4- Draft Amendments to Department Rule 11**

## **PURPOSE OF ACT 16**

The Legislature supported the changes made by Act 16 with a 2012 collaborative study that was completed by the United States Geological Survey and the University of Hawai'i. The 2012 study concluded that seventy percent of beaches in Hawai'i are undergoing a trend of chronic sand loss and shoreline retreat. More than thirteen miles of beach in the State have been completely lost to erosion fronting seawalls and revetments. In addition, the legislature included the *2017 Hawai'i Sea Level Rise Vulnerability and Adaptation* report, which found that with just 1.1 feet of sea level rise, many more miles of beach could be lost to erosion if widespread shoreline armoring is allowed.

Futhermore, the legislature found that increasing development along shorelines, increasing landward movement of the shoreline due to sea level rise and other human and natural impacts, and extensive beach loss fronting shoreline armoring necessitates a revision of existing policies and regulations. Such revisions would allow for the protection of beaches and other coastal environments from further degradation and reduce the exposure of shorefront communities to increasing erosion and flooding hazards caused by sea level rise.

The Legislature also found that a recent study by the University of Hawai'i coastal geology group identified several primary causes for the State's failure to meet coastal zone management policy objectives. Specifically, the study found that current policies, ordinances, and practices allow for:

- (1). The hardening of shorelines through a hardship variance that is granted based upon demonstrated hardship brought on by coastal erosion. When granted, these hardship variances set into motion a cycle of shoreline armoring that causes "flanking", or amplified erosion, on properties adjacent to armored shorelines. This continuous cycle of hardening and flanking can extend along an entire beach and, in a section of northeast Oahu, approximately forty-five per cent of observed shoreline hardening was implemented in response to adjacent hardening. This cycle, caused by a combination of beach erosion and coastal policy, has resulted in the narrowing and even elimination of beaches to the extent that they can no longer be used for public recreation or cultural practice; and

(2) Renovation and expansion of single-family homes in erosion and flood-prone coastal areas, thereby extending building lifetimes indefinitely and allowing for virtually complete coverage of coastal parcels by these structures. The average building surface area increased by twenty per cent (20%) following the establishment of the State's coastal zone management program and combined with sea level rise, this development increases the likelihood of mass structural failure and deposit of debris on public beaches.

The purpose of Act 16 is to strengthen the coastal zone management policy to protect state beaches and to reduce residential exposure to coastal hazards. More specifically, Act 16 resulted in the following substantive changes to the State's Coastal Zone Management Law (Chapter 205A, HRS).

In addition to amendments resulting from the passage of Act 16, the Planning Director is proposing amendments to Planning Department and Planning Commission rules to reflect changes that were made in HRS 205A prior to Act 16 but have yet to be updated in both Department and Commission rules. Note that material to be deleted is bracketed and struck-out while added material has been underscored. Additionally, material that is added from Act 16 is yellow color-coded, other HRS changes are green color-coded and the Director recommended changes are blue color-coded.

**PROPOSED AMENDMENTS TO THESE DEFINITIONS WHICH AFFECT  
DEPARTMENT RULE 11 (SHORELINE SETBACK VARIANCE, COMMISSION  
RULE 8 (SHORELINE SETBACK VARIANCE) AND COMMISSION RULE 9  
(SPECIAL MANAGEMENT AREA):**

1. Act 16 amended HRS 205A-1 by defining a "beach" as follows:
  - a. "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."

2. Act 16 amended HRS 205A-1 by defining a “Coastal hazards” as follows:
  - a. “Coastal hazards” means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and non-point source pollution.

**Reasons for the amendments:** Previous to this amendment, there was no definition of beach and coastal hazards.

**PROPOSED AMENDMENTS TO DEPARTMENT RULE 11 (SHORELINE SETBACK VARIANCE, COMMISSION RULE 8 (SHORELINE SETBACK VARIANCE) AND COMMISSION RULE 9 (SPECIAL MANAGEMENT AREA) BY TOPIC:**

3. Rename Commission Rule 8 to ‘Shoreline Setback Variance’ in order to avoid confusion with Department Rule 11 which is also titled ‘Shoreline Setbacks’.

**Reasons for the amendments:** Commission Rule 8 describes the process for the Commission to review and issue shoreline setback variances whereas Department Rule 11 describes the policy and process for establishing the shoreline setback line and enforcing activities and uses in the shoreline setback area.

4. Act 16 amended HRS 205A-22 by defining what “development” does include:
  - a. “Construction, reconstruction , [~~demolition,~~] or alteration of the size of any structure.”

**Reasons for the amendments:** Previous to this amendment, the demolition of any structure that was located in the SMA was considered to be development.

5. Act 16 amended HRS 205A-22 by stating that “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.”

**Reasons for the amendments:** Previous to this amendment, only single-family dwellings 7,500 sq ft or more in size were considered “development” and therefore required an SMA permit. With this amendment all single family dwellings located within a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion will not be exempt and will require an SMA permit in order to determine potential impacts to the shoreline area and other ocean resources.

6. Act 16 amended HRS 205A-22 by stating that “development” does not include the following:
  - a. “Nonstructural improvements to existing commercial or non-commercial structures.”

**Reasons for the amendments** Previous to this amendment, only non-structural improvements to existing commercial structures could be considered exempt from development. Act 16 went further to state that non-structural improvements to non-commercial structures (e.g., townhouses and condominiums) shall also be considered as exempt.

7. Act 16 amended 205A-26(2)(A) by setting forth criteria for the Grounds for Approval of Special Management Area Use Permits as shown:

“(1) 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, safety, or compelling public interest. [~~Such~~] Those adverse effects 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;”

Based on this amendment to HRS, Section 9-11(e)(1) of Commission Rule 9 is proposed to be amended as follows:

“(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 is clearly outweighed by public health, safety, or compelling public interest~~;~~. Those adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each of which taken by itself might not have a significant adverse effect, and the elimination of planning options;

**Reasons for the amendments:** Act 16 amended this section which changed substantial to significant. In addition, Commission Rule 9 was outdated and the Planning Director is taking this time to align the rule with the current HRS.

8. Act 16 amended 205A-26(2)(C) by setting forth criteria for the Grounds for Approval of Special Management Area Use Permits as shown:

“(1) The development is consistent with the county general plan, community plan, and zoning~~[-Such]~~; provided that a finding of consistency [does] shall not preclude concurrent processing where a general plan, community plan, or zoning amendment may also be required.”

Based on this amendment to HRS, Section 9-11(e)(3) of Commission Rule 9 is proposed to be amended as follows:

(1) The development is consistent with the ~~[General]~~general ~~[Plan]~~plan, community plan, ~~[Zoning]~~zoning ~~[Code]~~code and other applicable ordinances, provided that a finding of consistency shall not preclude concurrent processing where a general plan, community plan, or zoning amendment may also be required.

**Reasons for the amendments:** Act 16 amended this section to add the community plan type as a requirement in our review in addition Planning Commission Rule 9 was outdated and the Planning Director is taking this time to align the rule HRS.

9. Amended HRS 205A-29(a) was amended as shown which affects Section 9-11(d) of Planning Commission Rule 9:



“(d) Hearings

Upon acceptance of an SMA Use Permit application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of an SMA Use Permit application by the Director, or within a longer time period as agreed to by the applicant.

Promptly after the Commission fixing a date for the hearing, the applicant shall mail a notice of the hearing setting forth the time, date, and place of the hearing to the owners of properties, lessees, and others with a recorded possessory interest in property within three hundred feet of the perimeter boundary of the affected property and to any other person or agency that has made a written request to the Department for advance notice of the hearing, not less than twenty calendar days prior to the date set for the hearing. Prior to the date of the hearing, the applicant shall file with the Commission, through the Director, an affidavit or other similar proof of mailing of said notice. In addition to said notice and at least twenty calendar days prior to the date of the hearing, the Commission shall give public notice of the time, date, and place of the hearing at least [~~once statewide and~~] once in the County. Any failure to mail or to receive the public notice shall not invalidate the proceedings, provided further that the proceedings conform to the requirements of Chapter 91, HRS, as amended. These aforementioned notice requirements are not required for subsequent hearing dates upon the same application.

**Reasons for the amendments:** Previous to this amendment, the County was required to provide public notice statewide. Act 16 removed the statewide requirement.

10. Act 16 amended HRS 205A-43(a) as shown which affects Section 11-5 of Department Rule 11:

“(a) Setbacks along shorelines are established of not less than [~~twenty feet and not more than~~] forty feet inland from the shoreline. The department shall adopt rules

pursuant to chapter 91 and shall enforce the shoreline setbacks and rules pertaining thereto.”

Based on this amendment to HRS, Section 11-5 of Department Rule 11 is proposed to be amended as follows:

“(a) The minimum shoreline setback line shall not be less than forty (40) feet inland from the shoreline.”

**Reasons for the amendments:** This provision will help shift new development away from exposure to coastal hazards. This amendment will no longer allow for Counties to reduce the shoreline setback to less than 40 feet for existing shallow shoreline lots where the buildable area of the parcel will be less than 50% of the parcel after applying the setback.

11. HRS 205A-43.5(a)(2) was amended as shown which affects Section 8-10(a)(2) through (3) of Commission Rule 8 and Section 11-11(a)(2) through (3) of Department Rule 11:

“(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, that does not fix the shoreline, under an emergency authorization issued by the authority; provided that the structure or public facility is at risk of immediate damage from shoreline erosion[;] and the authorization does not exceed three years;

Based on this amendment to HRS, Section Section 8-10(a)(2) of Commission Rule 8 is proposed to be amended as follows:

(1) Protection of a structure determined by the Department to be legally constructed, [~~which costs more than \$20,000;~~] a legal structure 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 authority; provided that the structure or public facility is at risk of immediate damage from shoreline erosion as determined by the Department, in consultation with appropriate

agencies (i.e., U.S. Army Corps of Engineers, Department of Public Works)~~[-or]~~  
,and the authorization does not exceed three years;

**Reasons for the amendments:** The Planning Director recommends amending Commission Rule 8-10 *Waiver of Public Hearing and Action* in order to be in conformance with changes made to Chapter 205A of the HRS prior to Act 16.

12. HRS 205A-43.5(a)(3) was amended as shown which affects Section 8-10(a)(3) of Commission Rule 8 and Section 11-11(a)(3) of Department Rule 11:

(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”

**Reasons for the amendments:** The Planning Director recommends amending Commission Rule 8-10 *Waiver of Public Hearing and Action* in order to be in conformance with changes made to Chapter 205A of the HRS prior to Act 16.

13. Act 16 amended HRS 205A-46(1)(a)(8) and (9) as shown which affects Section 8-11 of Commission Rule 8:

- a. 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 authority ~~[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;
- b. Private facilities or improvements that may artificially fix the shoreline; provided that the authority ~~[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~~[-, and the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or]~~; provided further that 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

Based on this amendment to HRS, Section 8-11(b), (c) and (d) of Commission Rule 8 is proposed to be amended as follows:

(b) Shoreline-dependent Facility Standard.

A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

- (1) Drainage;
- (2) Boating, maritime, or watersports recreational facilities;
- (3) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the authority 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.

(c) Public Interest Standard.

A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

- (1) Facilities or improvements by public agencies or public utilities regulated under Chapter 269, HRS;
- (2) Private facilities or improvements that are clearly in the public interest.

(d) Hardship Standard.

(A) A variance may also be granted, provided that the proposal is the practicable

alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

(1) Private facilities or improvements that will not adversely affect beach processes, result in flanking shoreline erosion, or artificially fix the shoreline; provided that the Commission may consider any hardship that will result to the applicant if the facilities or improvements are not allowed within the shoreline area;

(2) Private facilities or improvements that may artificially fix the shoreline; provided that the Commission may consider hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; provided further that 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.

**Reasons for the amendments:** HRS 205A-46 allows for a variance to be granted for structures or activities to be located within the shoreline setback given that the proposed structure or activity is necessary for or ancillary to items listed in HRS 205A-46. The Planning Director recommends bulleting these uses for easier formatting into the following three specific standards: Shoreline-dependent Facility Standard, Public Interest Standard and a Hardship Standard. Act 16 ensures that Counties shall not grant variances for shoreline hardening structures in areas with sand beaches, unless the granting of such variance is clearly demonstrated to be in the interest of the general public.

14. Act 16 amended HRS 205A-44(b)(6) as shown which affects Department Rule 11-7(b):

“(b) 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;

Based on this amendment to HRS, Section 11-7(a)(9) of Department Rule 11 is proposed to be amended as follows:

- (9) Work being done consists of maintenance, repair, [~~reconstruction,~~] and minor additions to or alterations of legal, publicly owned boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes;

**Reasons for the amendment:** Act 16 amended this section which does not allow for the reconstruction of recreational facilities and the Planning Director is taking this time to align the rule with HRS.

- 15. Act 16 amended HRS 205A-44(b) as shown which affects Department Rule 11-7(b):

“(b) Provided that permitted structures may be repaired, but shall not be enlarged, rebuilt, or replaced within the shoreline area without a variance.”

Based on this amendment to HRS, Section 11-7(b) of Department Rule 11 is proposed to be amended as follows:

- (b) Structures or activities that qualify under section 11-7 (a)(6) through (10) may be repaired in conformance with plans approved by the Planning Department, but shall not be enlarged, rebuilt, or replaced within the shoreline area without a shoreline setback variance.

**Reasons for the amendments:** Act 16 amended this section which will prohibit the rebuilding or replacement of existing structures without an approved Shoreline Setback Variance.

- 16. As a result of the amendment to HRS 205A-44(b), which indicates that permitted structures in the shoreline area can be repaired but cannot be rebuilt or replaced without a variance, the Planning Director is adding definitions to Department Rule 11 as follows:

(j) “Rebuild” means the reconstruction of a lawfully existing structure when the

reconstruction is valued by a licensed professional engineer or architect at more than fifty per cent of the replacement cost of the structure.

- (k) “Repair” means the fixing, renovation, improvement, or restoration of any part of a lawfully existing structure, but not the entire structure, solely for the purpose of its maintenance and which does not result in an addition to, or enlargement or expansion of, the lawfully existing structure. “Repair” includes, but is not limited to alteration of floors, roofs, walls, or the supporting structure of a building or the rearrangement of any of its component parts.

**Reasons for the amendments:** The State Legislature did not provide definitions for “repaired”, “rebuilt” and “replaced” in Act 16. In order to effectively implement this section of HRS, these definitions are being added. These definitions are similar to definitions used by other counties in Hawai‘i.

17. HRS 205A-43.5 was amended as shown which affects Section 8-10(d) and (e) of Commission Rule 8:

“(d) The Department may waive a public hearing and take action on a variance application for the uses and activities in section 8-10(a) after public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, is provided.

and;

(e) A variance may be granted for a structure or activity otherwise prohibited by Planning Department Rule 11 (Shoreline Setback) and Chapter 205A, HRS if the Department finds in writing, based on the record, that the proposed structure or activity meets the criteria in Section 8-11.”

**Reasons for the amendments:** HRS, 205A-43.5 was amended prior to Act 16.

Therefore, the Planning Director is taking this time to update Department Rule 11 to reflect current State law.

18. The Planning Director is amending Department Rule 11-12 (b) and (d) as shown:

“(b) Any structure or activity prohibited within the shoreline setback area that has not received appropriate approvals or a shoreline setback variance or that has not complied with conditions of said variance shall be removed or corrected. No other state or county permit or approval shall be construed as a variance.”

and;

(d) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under Chapter 183C, HRS shall not be diminished by an artificial structure in violation of this rule.”

**Reasons for the amendments:** HRS, 205A-43.6 was amended prior to Act 16.

Therefore, the Planning Director is taking this time to update Department Rule 11 to reflect current State law.

19. The Planning Director is also amending Commission Rule 9 to update and bring clarity to the following sections:

(a) Rule 9-11(b)(4) Archaeological Resources Requirements when submitting an application:

(4) Archaeological Resources [~~(one of the following):~~

~~(A) An archaeological inventory report containing significance assessments, effect determinations, and proposed mitigation commitments. The report should be completed pursuant to Department of Land and Natural Resources—State Historic Preservation Division (DLNR-SHPD) rules.~~

~~(B) A “no effect” letter from the DLNR-SHPD.~~

~~(C) A copy of letter written by the applicant to the DLNR-SHPD requesting a “no effect” letter, including supporting documentation, to which DLNR-SHPD has not responded after 30 days.]~~

(A) A written description and plot plan showing any known historic, archaeological, and cultural resources on the property.



**Reasons for the amendments:** The State Historic Preservation Division (SHPD) requires that all document review related to the HRS, 6E-42 (Historic Preservation Review) review process be done by the Planning Department submitting applications and studies to SHPD through their HICRIS (Hawai'i Cultural Resource Information System) permitting system, rather than an applicant or landowner submitting the information directly to SHPD. The Department has been implementing this change in practice for several years, but this section of Commission Rule 9 has not been amended to reflect SHPD's current review process. Furthermore, this amendment will still require Applicants to include any information on any known historic, archaeological, and cultural resources that may exist on the subject property with their application.

Attached is a copy of the proposed amendments to Planning Commission Rule No. 8 and 9 that contains revisions that will bring these rules in line with the recent amendments to the State's Coastal Zone Management laws, upon which the County's SMA laws are based. In summary, one of the main changes made by Act 16, includes requiring a minimum shoreline setback of forty (40) feet instead of twenty (20), adding sea level rise to the definition of coastal hazards, adding a definition of beach to enhance beach protection, restricting construction of shoreline hardening structures at sites with beaches, requiring a shoreline setback variance to rebuild or replace legally built structures in the shoreline area, and including the construction of a single-family residence on a shoreline parcel as "development". These amendments are intended to promote shifting new development away from exposure to coastal hazards and shoreline erosion.

#### **PLANNING DIRECTOR RECOMMENDATION**

The Planning Director recommends that the Windward and Leeward Planning Commissions, meeting jointly, adopt the proposed amendments to Commission Rule 8 and 9. Please note that the proposed rule changes are considered a housekeeping measure to align the Planning Commission Rules of Practice and Procedure with current State law related to the special management area and shoreline setbacks. The Leeward and Windward Planning Commissions, meeting jointly, may adopt the proposed amendments as recommended, adopt the

proposed amendments with changes, or not adopt the proposed amendments. Should the Planning Commissions decide not to adopt the proposed amendments, the Planning Department and Planning Commissions will still need to implement HRS 205A, but their rules will not be aligned with the recent changes made by Act 16 and prior changes made to HRS 205A that are not reflected in the rules.

Additionally, as previously stated, the amendments to Department Rule 11 do not require approval by the Commission. The draft rule amendments are being provided to the Commission for their information and feedback prior to the rule being adopted by the Planning Director.

**ACT 16**

S.B. NO. 2060

A Bill for an Act Relating to Coastal Zone Management.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the coastal zone management program was established pursuant to Act 188, Session Laws of Hawaii 1977. The Act declared that it is state policy to:

- (1) Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources;
- (2) Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems;
- (3) Reduce hazards to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence; and
- (4) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

The legislature also finds that a 2012 collaborative study by the United States Geological Survey and the University of Hawaii indicates that seventy per cent of beaches in Hawaii are undergoing a trend of chronic sand loss and shoreline retreat. Further, more than thirteen miles of beach in the State have been completely lost to erosion fronting seawalls and revetments. The Hawaii sea level rise vulnerability and adaptation report, accepted in 2017 by the Hawaii climate change mitigation and adaptation commission, finds that with just 1.1 feet of sea level rise, many more miles of beach could be lost to erosion if widespread shoreline armoring is allowed. This could mean a loss of five miles of beach on Kauai, seven miles of beach on Oahu, and eight miles of beach on Maui. Based on its findings, the report recommends enabling beaches to persist with sea level rise and suggests integrating sea level rise considerations into Hawaii's laws regarding coastal zone management.

The legislature further finds that the convergence of dense development along shorelines, increasing landward migration of shoreline due to sea level rise and other human and natural impacts, and extensive beach loss fronting shoreline armoring necessitates revision of existing policies and regulations. Revision of these existing policies and regulations would both protect beaches and other coastal environments from further degradation and reduce the exposure of shorefront communities to increasing erosion and flooding hazards caused by sea level rise.

The legislature also finds that a recent study by the University of Hawaii coastal geology group identified several primary causes for the State's failure to meet coastal zone management policy objectives. Specifically, the study found that current policies, ordinances, and practices allow for:

- (1) The hardening of shorelines through a hardship variance that is granted based upon demonstrated hardship brought on by coastal erosion. When granted, these hardship variances set into motion a cycle of shoreline armoring that causes "flanking", or amplified erosion, on properties adjacent to armored shorelines. This continuous cycle of hardening and flanking can extend along an entire beach and, in a section of northeast Oahu, approximately forty-five per cent of observed shoreline hardening was implemented in response to adjacent hardening. This cycle, caused by a combination of beach erosion and coastal policy, has resulted in the narrowing and even elimination of beaches to the extent that they can no longer be used for public recreation or cultural practice; and
- (2) Renovation and expansion of single-family homes in erosion and flood-prone coastal areas, thereby extending building lifetimes indefinitely and allowing for virtually complete coverage of coastal parcels by these structures. The average building surface area increased by twenty per cent following the establishment of the State's coastal zone management program and, combined with sea level rise, this development increases the likelihood of mass structural failure and deposit of debris on public beaches.

The purpose of this Act is to strengthen coastal zone management policy by amending chapter 205A, Hawaii Revised Statutes, to protect state beaches and to reduce residential exposure to coastal hazards.

SECTION 2. Section 205A-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

““Authority” means the county planning commission, except in counties where the county planning commission is advisory only, in which case “authority” means the county council or such body as the council may by ordinance designate. The authority may, as appropriate, delegate the responsibility for administering this chapter.

“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 non-point source pollution.”

SECTION 3. Section 205A-2, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Objectives.

- (1) Recreational resources;
  - (A) Provide coastal recreational opportunities accessible to the public.
- (2) Historic resources;
  - (A) Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
- (3) Scenic and open space resources;
  - (A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.
- (4) Coastal ecosystems;
  - (A) Protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes, from disruption and minimize adverse impacts on all coastal ecosystems.
- (5) Economic uses;
  - (A) Provide public or private facilities and improvements important to the State’s economy in suitable locations.
- (6) Coastal hazards;
  - (A) Reduce hazard to life and property from [~~tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.~~] coastal hazards.
- (7) Managing development;
  - (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- (8) Public participation;
  - (A) Stimulate public awareness, education, and participation in coastal management.
- (9) Beach and coastal dune protection;

- (A) Protect beaches and coastal dunes for ~~[public]~~:
  - (i) Public use and recreation~~[-]~~;
  - (ii) The benefit of coastal ecosystems; and
  - (iii) Use as natural buffers against coastal hazards; and
- (B) Coordinate and fund beach management and protection.
- (10) Marine and coastal resources;
  - (A) Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- (c) Policies.
  - (1) Recreational resources;
    - (A) Improve coordination and funding of coastal recreational planning and management; and
    - (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
      - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
      - (ii) Requiring ~~[replacement]~~ restoration of coastal resources ~~[having]~~ that have significant recreational and ecosystem value, including~~[-]~~ but not limited to coral reefs, surfing sites, fishponds, [and] sand beaches, and coastal dunes, when ~~[such]~~ these resources will be unavoidably damaged by development; or requiring ~~[reasonable]~~ monetary compensation to the State for recreation when ~~[replacement]~~ restoration is not feasible or desirable;
      - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
      - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
      - (v) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;
      - (vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;
      - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and
      - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting ~~[such]~~ that dedication against the requirements of section 46-6;
  - (2) Historic resources;
    - (A) Identify and analyze significant archaeological resources;
    - (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
    - (C) Support state goals for protection, restoration, interpretation, and display of historic resources;
  - (3) Scenic and open space resources;
    - (A) Identify valued scenic resources in the coastal zone management area;

- (B) Ensure that new developments are compatible with their visual environment by designing and locating [~~such~~] those developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
  - (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
  - (D) Encourage those developments that are not coastal dependent to locate in inland areas;
- (4) Coastal ecosystems;
- (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
  - (B) Improve the technical basis for natural resource management;
  - (C) Preserve valuable coastal ecosystems[~~-, including reefs,~~] of significant biological or economic importance[~~;~~], including reefs, beaches, and dunes;
  - (D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
  - (E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures;
- (5) Economic uses;
- (A) Concentrate coastal dependent development in appropriate areas;
  - (B) Ensure that coastal dependent development [~~such as harbors and ports,~~] and coastal related development [~~such as visitor industry facilities and energy generating facilities,~~] are located, designed, and constructed to minimize exposure to coastal hazards and adverse social, visual, and environmental impacts in the coastal zone management area; and
  - (C) Direct the location and expansion of coastal [~~dependent developments~~] development to areas [~~presently~~] designated and used for [~~such developments~~] that development and permit reasonable long-term growth at [~~such~~] those areas, and permit coastal [~~dependent~~] development outside of [~~presently~~] designated areas when:
    - (i) Use of [~~presently~~] designated locations is not feasible;
    - (ii) Adverse environmental effects and risks from coastal hazards are minimized; and
    - (iii) The development is important to the State's economy;
- (6) Coastal hazards;
- (A) Develop and communicate adequate information about [~~storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution~~] the risks of coastal hazards;
  - (B) Control development, including planning and zoning control, in areas subject to [~~storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution~~] coastal hazards;
  - (C) Ensure that developments comply with requirements of the [~~Federal~~] National Flood Insurance Program; and

- (D) Prevent coastal flooding from inland projects;
- (7) Managing development;
  - (A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
  - (B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and
  - (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process;
- (8) Public participation;
  - (A) Promote public involvement in coastal zone management processes;
  - (B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and
  - (C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts;
- (9) Beach protection;
  - (A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;
  - (B) Prohibit construction of private ~~[erosion protection]~~ shoreline hardening structures ~~[seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not], including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures~~ interfere with existing recreational and waterline activities;
  - (C) Minimize the construction of public ~~[erosion protection]~~ shoreline hardening structures ~~[seaward of the shoreline;], including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities;~~
  - (D) Minimize grading of and damage to coastal dunes;
  - ~~(D)~~ (E) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and
  - ~~(E)~~ (F) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor; and
- (10) Marine and coastal resources;
  - (A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
  - (B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;



- (C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;
- (D) Promote research, study, and understanding of ocean and coastal processes, impacts of climate change and sea level rise, marine life, and other ocean resources to acquire and inventory information necessary to understand how ~~[ocean]~~ coastal development activities relate to and impact ~~[upon]~~ ocean and coastal resources; and
- (E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.”

SECTION 4. Section 205A-22, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “department” to read:

““Department” means the planning department ~~[in]~~ of the counties of Kauai, Maui, and Hawaii and the department of planning and permitting ~~[in]~~ of the city and county of Honolulu, or other appropriate agency as designated by the county councils.”

2. By amending the definition of “development” to read:

““Development” means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

- (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (2) Grading, removing, dredging, mining, or extraction of any materials;
- (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (5) Construction, reconstruction, ~~[demolition,]~~ or alteration of the size of any structure.

“Development” does not include the following:

- (1) 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;
- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (4) 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;
- (5) Zoning variances, except for height, density, parking, and shoreline setback;
- (6) Repair, maintenance, or interior alterations to existing structures;
- (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural,

- tural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (9) Transfer of title to land;
- (10) Creation or termination of easements, covenants, or other rights in structures or land;
- ~~[(11) Final subdivision approval; provided that in counties that may automatically approve tentative subdivision applications as a ministerial act within a fixed time of the submission of a preliminary plat map, unless the director takes specific action, a special management area use permit if required, shall be processed concurrently with an application for tentative subdivision approval or after tentative subdivision approval and before final subdivision approval;~~
- ~~(12)]~~ (11) Subdivision of land into lots greater than twenty acres in size;
- ~~[(13)]~~ (12) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land that is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
- ~~[(14)]~~ (13) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
- ~~[(15)]~~ (14) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
- ~~[(16)]~~ (15) Nonstructural improvements to existing commercial or non-commercial structures; and
- ~~[(17)]~~ (16) Construction, installation, maintenance, repair, and replacement of emergency management warning or signal devices and sirens;

provided that whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.”

3. By amending the definition of “special management area emergency permit” to read:

““Special management area emergency permit” means an action by the authority authorizing development in cases of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form; provided that ~~[such]~~ those structures were previously found to be in compliance with requirements of the ~~[Federal]~~ National Flood Insurance Program.”

4. By repealing the definition of “authority”.

~~[[““Authority” means the county planning commission, except in counties where the county planning commission is advisory only, in which case “authority” means the county council or such body as the council may by ordinance designate. The authority may, as appropriate, delegate the responsibility for administering this part.”]]~~

SECTION 5. Section 205A-26, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-26 Special management area guidelines.** In implementing this part, the authority shall adopt the following guidelines 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 authority in order to ensure:
  - (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; and
  - (D) Alterations to existing land forms 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.
- (2) No development shall be approved unless the authority has first found:
  - (A) That 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, safety, or compelling public interests. ~~[Such]~~ Those adverse effects 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;
  - (B) That the development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature; and
  - (C) That the development is consistent with the county general plan, community plan, and zoning~~[-Such]~~; provided that a finding of consistency [does] shall not preclude concurrent processing where a general plan, community plan, or zoning amendment may also be required.
- (3) The authority 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 areas 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; and
  - (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.”

SECTION 6. Section 205A-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The authority in each county, upon consultation with the central coordinating agency, shall adopt rules under chapter 91 setting the special management area use permit application procedures, conditions under which hearings must be held, and the time periods within which the hearing and action for special management area use permits shall occur. The authority shall provide for adequate notice to individuals whose property rights may be adversely affected and to persons who have requested in writing to be notified of special management area use permit hearings or applications. The authority shall also provide public notice [~~statewide~~] that is, at a minimum, circulated throughout the county at least twenty days in advance of the hearing. The authority may require a reasonable filing fee which shall be used for the purposes set forth herein.

Any rule adopted by the authority shall be consistent with the objectives, policies, and special management area guidelines provided in this chapter. Action on the special management permit shall be final unless otherwise mandated by court order.”

SECTION 7. Section 205A-41, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Department” means the planning department of the counties of Kauai, Maui, and Hawaii and the department of planning and permitting of the city and county of Honolulu, or other appropriate agency as designated by the county councils.”

SECTION 8. Section 205A-43, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~Setbacks along shorelines are established of not less than [twenty feet and not more than]~~ forty feet inland from the shoreline. The department shall adopt rules pursuant to chapter 91, and shall enforce the shoreline setbacks and rules pertaining thereto.”

SECTION 9. Section 205A-43.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Prior to action on a variance application, the authority shall hold a public hearing under chapter 91. By adoption of rules under chapter 91, the authority may delegate responsibility to the department. Public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, shall be provided, but a public hearing may be waived 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, that does not fix the shoreline, under an emergency authorization issued by the authority; 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.”

SECTION 10. Section 205A-44, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as provided in this section, structures are prohibited in the shoreline area without a variance pursuant to this part. 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 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 approval;
- (4) They are necessary for or ancillary to continuation of existing agriculture or aquaculture in the shoreline area on June 16, 1989;
- (5) They are minor structures permitted under rules adopted by the department which do not affect beach processes or artificially fix the shoreline and do not interfere with public access or public views to and along the shoreline; or
- (6) 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;

provided that permitted structures may be repaired, but shall not be enlarged, rebuilt, or replaced within the shoreline area without a variance.”

SECTION 11. Section 205A-46, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) A variance may be granted for a structure or activity otherwise prohibited in this part if the authority finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that the authority 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 watersports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under chapter 269;
- (7) Private facilities or improvements that are clearly in the public interest;
- (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 authority ~~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;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority ~~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, ~~and~~

~~the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or; provided further that 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~~

- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the authority 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.”

2. By amending subsection (c) to read:

“(c) 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.”

SECTION 12. Section 205A-62, Hawaii Revised Statutes, is amended to read as follows:

“**§205A-62 Duties and responsibilities of the lead agency.** The lead agency shall have the following duties and responsibilities:

- (1) Coordinate overall implementation of the plan, giving special consideration to the plan’s priority recommendations;
- (2) Review and periodically update the plan;
- (3) Coordinate the development of state agency work plans to implement the ocean resources management plan. The work plans shall be revised on a biennial basis and coordinated with the budget process. State agencies with responsibilities relating to marine and coastal zone management include but are not limited to:
  - (A) The department of agriculture;
  - (B) The department of business, economic development, and tourism;
  - (C) The department of defense;
  - (D) The department of education;
  - ~~(D)~~ (E) The department of health;
  - ~~(E)~~ (F) The department of land and natural resources;
  - ~~(F)~~ (G) The department of public safety;
  - ~~(G)~~ (H) The department of transportation; and
  - ~~(H)~~ (I) The University of Hawaii;
- (4) Ensure that state agency work plans are closely coordinated with the work plans of relevant federal and county agencies;
- (5) Analyze, resolve conflicts between, and prioritize, in cooperation with relevant agencies and as part of the work plan development process, the sector-specific recommendations included in the plan;
- (6) Coordinate exclusive economic zone and other marine-related issues with state and county agencies;

- (7) Provide technical assistance to the agencies on policy and issue-related matters regarding marine and coastal resources management;
- (8) Coordinate marine and coastal education activities; and
- (9) Adopt rules pursuant to chapter 91 to carry out the purposes of this part.”

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved September 15, 2020.)

## RULE 8. SHORELINE SETBACK VARIANCE

### 8-1 Authority

Pursuant to authority conferred upon the Commission by Chapter 205A, Hawai'i Revised Statutes (HRS), as amended, the rules hereinafter contained are hereby established and shall apply to all lands within the shoreline setback area.

### 8-2 Purpose

The growing population and expanding development have brought about numerous cases of encroachment of structures upon the shoreline and within the nearby shoreline areas. Many of these structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks. The purpose of this rule is to establish authority, criteria and procedures for the review of all activities or structures proposed within the shoreline setback area which requires a Shoreline Setback Variance in accordance with the requirements of this rule and Chapter 205A Part III, [Hawai'i Revised Statutes]HRS.

### 8-3 Definitions

For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

- (a) "Activity" means any landscaping, excavating, grubbing, grading, filling or stockpiling of earth materials, including sand, coral, coral rubble, rocks, soil, or marine deposits.
- (b) "Authority" means the county planning commission. The authority may, as appropriate, delegate the responsibility for administering this rule, as stated in this rule.
- (c) "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.

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

(e) “Department” means the planning department of the County of Hawai‘i.

~~(b)~~(f) “Lot” means a parcel, tract, or area of land established by subdivision or as otherwise lawfully established prior to the adoption of the Chapter 23 (Subdivision Code), Hawai‘i County Code 1983 (2016 Edition, as amended) and accepted by the Department.

~~(c)~~(g) “Practicable alternative” means an alternative to the proposed project which is available and capable of being done, taking into consideration existing technology and logistics, and which would accomplish the basic purposes of the project while avoiding or having less adverse impact on the shoreline area.

~~(d)~~(h) “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, which has been certified by the Board of Land and Natural Resources in accordance with its rules.

~~(e)~~(i) “Shoreline setback area” shall include all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this rule extends seaward of the shoreline, then the term "shoreline setback area" shall include the entire structure.

~~(f)~~(j) “Shoreline setback line” means that line established by the Department in accordance with the requirements of Department Rule No. 11 regarding Shoreline Setback, running inland from and parallel to the certified shoreline at a horizontal plane.

~~(g)~~(k) “Structure” includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

#### 8-4 Variance Application and Content

An application for a shoreline setback variance shall be filed with the Commission, through the Department, and shall include:

(a) A non-refundable filing and processing fee of five hundred (\$500) dollars.

~~(b)~~

- (1) Application form;
- (2) Description of the property in sufficient detail, including the tax map key identification, location map, and land area;
- (3) Written description of the proposed project, including a statement as to how the request complies with the criteria within Section 8-11;
- (4) An environmental assessment or environmental impact statement consistent with the requirements of Chapter 343, [~~Hawai'i Revised Statutes~~]HRS, which may include, but not be limited to, flood hazard engineering studies of subject property and project's impact analysis on adjacent properties, an archaeological survey, floral and faunal surveys, photographs, existing and proposed contours; and
- (5) A site plan of the shoreline setback area, drawn to scale, showing:
  - (A) Existing natural and man-made features and conditions within the shoreline setback area;
  - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
  - (C) The certified shoreline;
  - (D) The shoreline setback line;
  - (E) Contours at a minimum interval of five feet unless waived by the Commission;
  - (F) Proposed development and improvements showing new conditions.

~~(e)~~(b) A copy of the certified shoreline survey map of the property.

~~[(d)]~~(c) Detailed justification of the proposed project, which addresses the criteria and conditions set forth in Section 8-11.

~~[(e)]~~(d) A list of all properties by tax map key located within 300 feet of the perimeter boundary of the property under consideration.

~~[(f)]~~(e) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.

~~[(g)]~~(f) Any other information required by the Commission.

#### 8-5 Posting of Signs for Public Notification

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
  - (1) The nature of the application;
  - (2) The proposed use of the property;
  - (3) The size of the property;
  - (4) The tax map key(s) of the property;
  - (5) That the public may contact the Department for additional information; and
  - (6) The address and telephone number of the Department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
- (d) The applicant shall file an affidavit with the Department not more than five

days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

8-6 Incomplete Application

The Commission, through the Department shall neither accept nor process an application which is incomplete as to form and content. An incomplete application shall be returned with a written explanation of its deficiencies.

8-7 Compliance with Chapter 343, Hawai'i Revised Statutes

An environmental assessment or environmental impact statement, prepared in accordance with the requirements of Chapter 343, [~~Hawai'i Revised Statutes (HRS)~~]HRS and Title 11, Chapter 200.1, Hawai'i Administrative Rules (HAR), shall accompany the filing of a shoreline setback variance application with the Commission. The Department, on behalf of the Commission, shall be the accepting agency of all environmental assessments and/or environmental impact statements, if appropriate, which are prepared in accordance with this rule. A shoreline setback variance application shall not be considered complete until such time the Department has complied with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, HAR.

8-8 Public Hearing

- (a) Except as otherwise provided in this rule, the Commission shall conduct a public hearing within a period of ninety days from the date of acceptance of a complete application, or within a longer time period as agreed to by the applicant. Prior to acceptance of an application, the applicant shall comply with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, HAR. In the case of a finding of no significant impact (FONSI) and final environmental impact statements, the [~~Office of Environmental Quality Control Bulletin~~]Office of Planning and Sustainable Development, Environmental Review Program Periodic Bulletin publication date will be used as compliance. For exemptions, the date of determination will be used.
- (b) At least twenty days prior to the date of the public hearing, the Commission shall publish a notice of the hearing in at least two daily newspapers of general circulation in the county which includes the following:
  - (1) Name of the applicant;
  - (2) The location of the property involved, including its physical address and tax map key number;
  - (3) Nature of the variance sought;

- (4) Date, time, and place of the public hearing.
- (c) Promptly after the Commission's fixing a date for the hearing but not less than ten days prior to the date of the hearing, the applicant shall mail a notice of the hearing to all property owners within three hundred feet of the affected property. Reasonable notice shall also be provided to those persons who have requested such notification of the applicant. Prior to the date of the hearing, the applicant shall file with the Commission proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like. However, any failure to mail or to receive the written notice shall not invalidate the proceedings.
- (d) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 8-8(c). An additional two hundred fifty (\$250) dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

8-9 Decision

- (a) Within sixty days following the close of the public hearing(s), or within a longer time period as agreed to by the applicant, the Commission shall render a decision to approve or deny the application.
- (b) Notice of the decision shall be promptly given to the applicant by delivery thereof.
- (c) Whenever an application for a variance has been denied, no new application for the same or similar development, covering all or any portion of the property involved in the application, shall be accepted by the Commission for a period of one year from the effective date of the denial of the application; provided, however, that upon showing of a substantial change of circumstances the Commission may permit the filing of a new application prior to the expiration of such a one year period.

8-10 Waiver of Public Hearing and Action

- (a) The Commission hereby delegates to the Department the authority to waive a public hearing and to take action on a variance application for:
  - (1) Stabilization of shoreline erosion by moving sand entirely on public lands;
  - (2) Protection of a structure determined by the Department to be legally

constructed, ~~[which costs more than \$20,000;]~~ a legal structure 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 authority, provided that the structure or public facility is at risk of immediate damage from shoreline erosion as determined by the Department, in consultation with appropriate agencies (i.e., U.S. Army Corps of Engineers, Department of Public Works)~~[-or-]~~, 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 (25) calendar days after public notice of the application; or~~

~~(3)~~(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.

(b) An applicant who seeks processing under Section 8-10 shall make the request in writing upon submittal of the variance application.

(c) The Department may deny the public hearing waiver and the application shall be heard and noticed by the Commission in accordance with Section 8-8.

~~(d) — The Department shall promulgate rules to administer Section 8-10-]~~

(d) ~~The Department may waive a public hearing and take action on a variance application for the uses and activities in Section 8-10(a) after public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, is provided.~~

(e) ~~A variance may be granted for a structure or activity otherwise prohibited by Planning Department Rule 11 (Shoreline Setback) and Chapter 205A, HRS if the Department finds in writing, based on the record, that the proposed structure or activity meets the criteria in Section 8-11.~~

#### 8-11 Criteria for Approval of a Variance

(a) A variance may be granted for a structure or activity otherwise prohibited by ~~[these rules]~~Planning Department Rule 11 (Shoreline Setback) and Chapter 205A, HRS if the Commission finds in writing, based on the record, that the proposed structure or activity is necessary for or ancillary to:

(l) Cultivation of crops;

(2) Aquaculture; [øf]

(3) Landscaping, provided that the Commission finds that the proposed structure or activity will not adversely affect beach processes, will not impede public access, and will not artificially fix the shoreline.

~~[(b) — A variance may also be granted upon a finding that, based upon the record, the proposed structure or activity meets one of the following standards of this subsection:~~

~~(1) — Shoreline dependent Facility Standard.~~

~~A variance may be granted for an activity or structure that is necessary for or ancillary to a shoreline dependent facility or improvement, including drainage facilities and boating, maritime or ocean sports recreational facilities; provided that the proposal is the practicable alternative which best conforms to the purpose of this rule.~~

~~(2) — Public Interest Standard.~~

~~A variance may be granted for an activity or structure which is undertaken by a public agency or by a public utility regulated under Chapter 269, Hawaii Revised Statutes, or a private facility or improvement which is undertaken by a private entity and is clearly in the public interest; provided that the proposal is the practicable alternative which best conforms to the purpose of this rule.~~

~~(3) — Hardship Standard.~~

~~(A) — A structure or activity may be granted a variance upon grounds of hardship only if:~~

~~(i) — The applicant would be deprived of reasonable use of the land if required to comply fully with this rule; and~~

~~(ii) — The request is due to unique circumstances and does not draw into question the reasonableness of this rule; and~~

~~(iii) — The request is the practicable alternative which best conforms to the purpose of this rule.~~

~~(B) — Before granting a hardship variance, the Commission must~~

determine that the request is a reasonable use of the land. The determination of the reasonableness of the use of land shall consider factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.

~~(C) If a structure is proposed to artificially fix the shoreline, the Commission must also determine that shoreline erosion is likely to cause hardship if the structure is not allowed within the shoreline setback area.~~

~~(D) Hardship shall not be determined as a result of zoning amendments, planned unit development (PUD) permits, cluster plan development (CPD) permits, or subdivision approvals after June 16, 1989.]~~

**(b) Shoreline-dependent Facility Standard.**

A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

(1) Drainage;

(2) Boating, maritime, or watersports recreational facilities;

(3) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the authority 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.

**(c) Public Interest Standard.**

A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

(1) Facilities or improvements by public agencies or public utilities regulated under Chapter 269, HRS;

(2) Private facilities or improvements that are clearly in the public interest



(d) Hardship Standard.

(A) A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

(1) Private facilities or improvements that will not adversely affect beach processes, result in flanking shoreline erosion, or artificially fix the shoreline; provided that the Commission may consider any hardship that will result to the applicant if the facilities or improvements are not allowed within the shoreline area;

(2) Private facilities or improvements that may artificially fix the shoreline; provided that the Commission may consider hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; provided further that 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.

(B) A structure or activity may be granted a variance upon grounds of hardship only if:

(i) The applicant would be deprived of reasonable use of the land if required to comply fully with this rule; and

(ii) The request is due to unique circumstances and does not draw into question the reasonableness of this rule; and

(iii) The request is the practicable alternative which best conforms to the purpose of this rule.

(C) Before granting a hardship variance, the Commission must determine that the request is a reasonable use of the land. The determination of the reasonableness of the use of land shall consider factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.

(D) If a structure is proposed to artificially fix the shoreline, the Commission must also determine that shoreline erosion is likely to

cause hardship if the structure is not allowed within the shoreline setback area.

(E) Hardship shall not be determined as a result of zoning amendments, planned unit development (PUD) permits, cluster plan development (CPD) permits, or subdivision approvals after June 16, 1989.

~~[(e)](e)~~ No variance shall be granted unless appropriate conditions are imposed as applicable:

- (1) To comply with Chapters 10 and 27 of the Hawai'i County Code relating to Erosion and Sedimentation Control and Flood Control, respectively;
- (2) To maintain safe lateral access along the shoreline or adequately substitute for its loss;
- (3) To minimize risk of adverse impacts on beach processes;
- (4) To minimize risk of structures failing and becoming loose rocks, sharp or otherwise dangerous debris, or rubble on public property; and
- (5) To minimize adverse impacts on public views to, from, and along the shoreline.

#### 8-12 Amendments to a Variance

- (a) The applicant may apply to the Commission through the Department for an amendment to the variance.
- (b) In the case of additions, modifications, and/or deletions to the variance or conditions, the applicant shall submit the written request, which includes:
  - (1) The affected section of the variance or condition;
  - (2) The specific amendment requested;
  - (3) The reasons for the request; and
  - (4) Any other information required by the Commission.
- (c) In the case of time extensions, the applicant shall file the request not less than ninety days prior to the expiration date of the time conditions, setting forth:

- (1) The affected condition;
  - (2) The length of time requested;
  - (3) The reasons for the request; and
  - (4) Any other information required by the Commission.
- (d) Upon submitting a request as set forth in Section 8-12(b) or (c), with the exception of administrative time extensions, the applicant shall also file a two hundred fifty (\$250) dollar processing fee.
  - (e) The hearing and notice procedures and action shall be the same as under Sections 8-5, 8-8, and 8-9.

#### 8-13 Administration and Enforcement

The Department is responsible for the processing of all variance applications and is also responsible for the enforcement of all conditions and requirements associated with a variance issued in accordance with this rule.

#### 8-14 Appeals

- (a) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.
- (b) If a contested case hearing is held a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

#### 8-15 Revocation

- (a) A Shoreline Setback Variance may be revoked by the Director in the event that any property owner who holds the variance sought to be revoked or any other person, with the property owner's consent, submits a written statement to the Director verifying that the development approved under the variance issued has either not been established or has been abandoned.
- (b) A Shoreline Setback Variance may be revoked by the Commission in the event that:
  - (1) The Director requests the revocation if:
    - (A) There has been noncompliance with the conditions of the

variance; or

- (B) The use authorized under the variance is creating a threat to the health or safety of the community.
- (2) The proceeding to revoke a Shoreline Setback Variance, upon request of the Director, shall require written notice to the property owner and to the person who has been issued the variance prior to the Commission taking action to revoke the variance.

## RULE 9. SPECIAL MANAGEMENT AREA

### 9-1 Authority

Pursuant to authority conferred by Chapter 205A, Hawai'i Revised Statutes (HRS), the rule hereinafter contained is hereby established and shall apply to all lands within the Special Management Area of the County of Hawai'i.

### 9-2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai'i. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

### 9-3 Title

This rule shall be known as the "Special Management Area Rule of the County of Hawai'i."

### 9-4 Definitions

For the purpose of this rule, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

(a) "Artificial light" or "artificial lighting" means the light emanating from any fixed human-made device.

~~[(a)]~~(b) "Assessment" means an evaluation by the Department of a proposed use, activity, or operation to determine whether a Special Management Area Use Permit is required.

(c) "Authority" means the county planning commission. The authority may, as appropriate, delegate the responsibility for administering this rule, as stated in this rule.

~~[(b) "Public Works Director" means the Director of the Department of Public Works of the County of Hawai'i.]]~~

(d) "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.

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

[(e)](f) “Crops” means agricultural produce or part(s) of plants or trees cultivated for commercial or personal use including but not limited to the raising of livestock.

[(e)](g) “Cultural” pertains to traditional and customary practices and usage of resources to fulfill responsibilities and rights possessed and exercised by ahupua‘a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

(h) “Department” means the planning department of Hawai‘i County.

[(e)](i) “Development” means any of the following uses, activities, or operations on land or in or under water within the Special Management Area:

(1) “Development” includes the following:

(A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;

(B) Grading, removing, dredging, mining, or extraction 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 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 uses, activities or operations:

(A) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred (7,500) 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. Floor area shall be the total area of all floors of a building(s) associated with the single-family residence, including a basement and accessory structures, measured along the exterior walls of such building(s). The floor area of a building(s), or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above;

- (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) Repair and maintenance of 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 or relating to existing uses;
- (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan;
- (H) Use of any land for the purpose of cultivating, planting, growing, and harvesting 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;
- (I) Transfer of title of land;
- (J) Creation or termination of easements, covenants, or other rights in structures or land;
- (K) Subdivision of land into lots greater than twenty acres in size;
- (L) The amendment of the General Plan, State Land Use

Boundary amendments and changes of zone;

(M) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

(N) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;

(O) Structural and non-structural improvements to existing single-family residences, where otherwise permissible; ~~and~~

(P) Non-structural improvements to existing commercial or non-commercial structures;

(Q) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens~~[-]~~; and

(R) Plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the Division of Boating and Ocean Recreation of the State Department of Land and Natural Resources.

(3) Any proposed use, activity, or operation listed in Section ~~9-4(e)(2)~~9-4(i)(2) shall be deemed to be “Development” until the Director has determined it to be exempted from the definition of “development.”

(4) Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as “development” for the purpose of this rule.

(j) “Direct illuminate” means to illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.

~~(k)~~(k) “EIS” means an informational document prepared in compliance with Chapter 343, HRS, and the Hawai‘i Administrative Rules, Title II, Chapter 200.1 (Environmental Impact Statement Rules). An EIS discloses the environmental effects of a proposed action, effects of a proposed action on



the economic welfare, social welfare, and cultural practices of the community and State, effects of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.

- ~~[(g)]~~(l) “Estuary” means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the seawater is measurably diluted with fresh water derived from land drainage.
- ~~[(h)]~~(m) “Native Hawaiian Rights” means those rights defined in and protected under HRS 1-1, HRS 7-1, HRS 174C-101, Article XII, Section 7 of the Hawai‘i State Constitution, and in rulings of Hawai‘i case law.”
- (n) “Ocean waters” means all waters seaward of the shoreline within the jurisdiction of the State.
- ~~[(i)]~~(o) “Owner” means all equitable and legal holders or lessees of real property. Lessees shall present certification of approval from the legal owner.
- ~~[(j)]~~(p) “Person” means and includes any individual, organization, partnership, or corporation, including any utility and any agency of government.
- ~~[(k)]~~(q) “Petitioner” means and includes any person who seeks permission or authorization which the Commission may grant under this rule.
- (r) “Public Works Director” means Director of the Department of Public Works of the County of Hawai‘i.
- ~~[(l)]~~(s) “Shoreline” means the upper reaches of the wash of 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.
- ~~[(m)]~~(t) “Shoreline Survey” means the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a registered land surveyor in the State of Hawai‘i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chairman of the Board of Land and Natural Resources.
- ~~[(n)]~~(u) “Single-Family Residence” means a detached building designed for and/or used as the complete facility for cooking, sleeping and living area of a single family only and occupied by no more than one family. Single family residences may include uses or structures normally considered accessory to

the single family facilities provided that any such uses or structures are situated on the same lot or building site and are in compliance with all requirements of any county or state regulation, statute, or ordinance. A single family shall include all persons living in a dwelling related by blood, marriage or by adoption or a group comprised of not more than five persons not related by blood, marriage or by adoption.

[(~~o~~)](v) “Special Management Area” means the land extending inland from the shoreline as delineated on the maps filed with the Commission as of June 8, 1977, or as amended pursuant to Section 9-21.

[(~~p~~)](w) “Special Management Area Emergency Permit” means an action by the Director authorizing development in cases of emergency requiring immediate action to prevent substantial harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that [~~such~~]those structures were previously found to be in compliance with requirements of the [~~Federal~~]National Flood Insurance Program.

[(~~q~~)](x) “Special Management Area Minor Permit” means an action by the Director authorizing development, the valuation of which is not in excess of \$500,000 and which has no cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.

[(~~r~~)](y) “Special Management Area Use Permit” means an action by the Commission authorizing development, the valuation of which exceeds \$500,000 or which may have a cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.

[(~~s~~)](z) “Structure” means and includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

[(~~t~~)](aa) “Use” means any purpose for which a structure or a tract of land is designed, arranged, intended, maintained or occupied or any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.

[(~~u~~)](bb) “Valuation” shall be determined by the Director and means the estimated cost to replace the structure, in kind, based on current replacement costs, or in the case of other developments, as defined in [~~9-4(e)(1)~~] 9-4(i)(1), the fair market value of the development.

[(~~v~~)](cc) “Vegetation Growth” means any plant, tree, shrub, grass, or groups, clusters or patches of the same, naturally rooted and growing.

- ~~[(w) “Artificial light” or “artificial lighting” means the light emanating from any fixed human-made device.~~
- ~~(x) “Directly illuminate” means to illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.~~
- ~~(y) “Ocean waters” means all waters seaward of the shoreline within the jurisdiction of the State.]~~

9-5 Special Management Area

Special Management Area of the County shall be as delineated on such maps filed with the Authority as of June 8, 1977, or as may be amended pursuant to Section 9-21, and shall be the official Special Management Area to be administered and enforced under this rule.

9-6 Objectives and Policies of Chapter 205A, HRS

- (a) The objectives and policies of the coastal zone management program shall be those set forth in Section 205A-2, HRS, as amended.
- (b) The Commission shall implement these objectives and policies, as appropriate.

9-7 Special Management Area Guidelines

The Special Management Area guidelines set forth in Section 205A-26, HRS, as amended, shall be used by the Commission, as appropriate, for the review of developments proposed in the Special Management Area.

9-8 Permits Required for Development

- (a) No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.
- (b) No State or County Agency authorized to issue permits within the Special Management Area shall authorize any development unless approval is first received in accordance with this rule.
- (c) Special Management Area Minor, Use or Emergency Permits or exemptions validly issued by the Department or the Commission, subsequent to any amendment to Chapter 205A, ~~[Hawai'i Revised Statutes]~~HRS but preceding any supportive amendment to this rule shall continue to be considered valid.

9-9 Authority of the Department in the Special Management Area

All development within the Special Management Area shall be administered through the Department under this rule pursuant to the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS.

To improve the efficiency of the Commission's review, approval and permitting processes granted upon it by Chapter 205A-22, [~~Hawai'i Revised Statutes~~]HRS and in accordance with Rule 9 herein, the Commission hereby delegates to the Director the authority to process assessments, determinations and conditions regarding exemptions, issue and enforce Special Management Area Minor Permits and Special Management Area Emergency Permits, and to administer, interpret, and enforce terms, scope and conditions set forth in Special Management Area Use Permits issued by the Commission.

#### 9-10 Assessment

- (a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed use, activity or operation will: a) exceed \$500,000 in valuation; or b) have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedures may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.
- (b) For proposed uses, activities or operations that are subject to an assessment, the applicant shall submit to the Department a Special Management Area Assessment (SMAA) on a form prepared by the Department. The review and acceptance of the assessment application shall follow the procedures pursuant to Section 25-2-3 (Review and acceptance of applications) in Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). The information on the SMAA form shall include, but not be limited to, the following:
  - (1) The tax map number for the property.
  - (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon and any other information necessary to a proper determination relative to the specific request.
  - (3) A written description of the proposed project and a statement of objectives.
  - (4) An Environmental Assessment (EA) or Environmental Impact Statement (EIS) if required under Chapter 343, HRS, or when required by the Director.

- (5) A written description of the anticipated impacts of the proposed uses, activities or operations on the Special Management Area including but not limited to:
  - (A) Description of environmental setting;
  - (B) The relationship of the proposed action to land use plans, policies, and control of the affected area;
  - (C) The probable impact of the proposed action on the environment;
  - (D) Any probable adverse environmental effects which cannot be avoided;
  - (E) Alternatives to the proposed action;
  - (F) Mitigating measures proposed to minimize impact; and
  - (G) Any irreversible and irretrievable commitment of resources.
- (6) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
  - (A) The identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area;
  - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
  - (C) The feasible action, if any, to be taken to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (7) A written statement discussing the proposed use, activity or operation in relation to the objectives and policies as provided by Chapter 205A, HRS.
- (8) A statement of the valuation of the proposed use, activity or operation.

- (9) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline.
  - (10) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used.
  - (11) Any other plans or information required by the Director. An EIS that has been declared adequate under the National Environmental Policy Act (NEPA) or under Chapter 343, HRS, may constitute a valid filing under this section.
  - (12) A fifty dollar (\$50) filing fee.
- (c) The Director shall assess the proposed use, activity or operation upon the applicant's compliance with Section 9-10B based on the following criteria:
- (1) The valuation of the proposed use, activity or operation.
  - (2) The potential effects and significance of each specific circumstance of the use, activity or operation, according to the criteria of [substantial]significant adverse effect established by Section 9-10H.
- (d) The Director, within sixty calendar days after the receipt of all filing requirements or within a longer period as may be agreed to by the applicant, shall notify the applicant in writing that:
- The proposed use, activity or operation does not constitute a development or is exempt from the definition of development; or
- A Special Management Area Minor Permit is being issued; or
- A Special Management Area (Major) Use Permit is required.
- If the proposed use, activity, or operation is less than \$500,000 in value and the Director fails to act within the sixty calendar day period or within such longer period as may have been agreed to by the applicant, the proposed use, activity or operation shall be forwarded to the Commission for its consideration. The notice and hearing procedures and action shall be the same as under Section 9-11(c) through 9-11(f).
- (e) Where it is found that the proposed use, activity or operation is not in excess of \$500,000 in valuation; and will not have a cumulative impact, or a

[substantial]significant adverse effect on the Special Management Area, and after review by the Public Works Director for compliance with Chapter 27, Flood Control, of the Hawai'i County Code, the Director shall issue a Special Management Area Minor Permit.

- (1) The issuance of such minor permit shall be subject to any reasonable terms or conditions.
- (2) A copy of the Special Management Area Minor Permit issued shall be filed with the Commission and the Office of Planning of the State Department of Business, Economic Development and Tourism.

(f) The Director shall declare that a Special Management Area Use Permit is required if it is found that the proposed use, activity or operation has a valuation in excess of \$500,000 or may have a [substantial]significant adverse effect on the Special Management Area. Should a determination be made that the proposed use, activity or operation requires a Special Management Area Use Permit, the applicant shall submit such application in accordance with Section 9-11.

(g) The Director shall declare the proposed use, activity or operation exempt from the definition of development if it is found that the proposal falls in any category under Section 9-4[(e)](h)(2), and does not have a cumulative impact, or a [substantial]significant adverse environmental or ecological effect on the Special Management Area. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a [substantial]significant adverse effect on the Special Management Area.

(h) Criteria of [Substantial]Significant Adverse Effect

In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action.

A '[substantial]significant adverse effect' is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a [substantial]significant adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as the short or long-term effect of the proposal. The Director should bear in mind that in most instances, the following factors of a proposal, although not limited to same, may constitute a [substantial]significant adverse effect on the environment when the proposed use, activity or operation:

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans;
- (2) curtails the range of beneficial uses of the environment;
- (3) conflicts with the long-term environmental policies or goals of the General Plan or the State Plan;
- (4) [substantially]significantly affects the economic or social welfare and activities of the community, County or State;
- (5) involves [substantial]significant secondary impacts, such as population changes and effects on public facilities;
- (6) in itself has no [substantial]significant adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;
- (7) [substantially]significantly affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (8) detrimentally affects air or water quality or ambient noise levels;
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water; or
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

(i) SMA Short Form Assessment

The Department may create a SMA short form assessment to be used by the Department to assess uses that may result in a determination that the proposed use is exempt, i.e., single family residence, minor grubbing, or accessory structures. The short form assessment may include, but not be limited to the following information:

- (1) The tax map number for the property;
- (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon;



- (3) Description of the proposed action, including the extent of land clearing, if any;
- (4) Description of any known historical sites, anchialine ponds, wetland, or sandy beach, and any other pertinent information.

In case of a single family dwelling, a Building Permit application may suffice as the plot plan required under (2).

The Director may require a full SMAA if it is determined through the short form assessment review that further information is needed from the applicant. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a significant adverse effect on the SMA.

#### 9-11 Special Management Area Use Permit Procedures

- (a) Compliance with Chapter 343, [~~Hawai'i Revised Statutes~~]HRS

If the action proposed requires compliance with Chapter 343, [~~Hawai'i Revised Statutes~~]HRS, an environmental assessment or environmental impact statement shall accompany the filing of a special management area use permit application. The Department, on behalf of the Commission, shall be the accepting authority of all environmental assessments and/or environmental impact statements, if appropriate, which are prepared in accordance with Chapter 343, [~~Hawai'i Revised Statutes~~]HRS and this rule. A special management area use permit application shall not be considered complete until such time as the requirements of Chapter 343, [~~Hawai'i Revised Statutes~~]HRS and Title 11, Chapter 200.1, Hawai'i Administrative Rules, if applicable, have been complied with.

- (b) Application

An applicant who has received a determination that the proposed use, activity or operation does not conform to the requirements for a minor permit, or who has determined on its own that the proposed use, activity or operation will exceed \$500,000 in valuation or will have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, shall apply to the Authority through the Director for a Special Management Area Use Permit.

The applicant shall submit the following to the Director:

- (1) The completed application including the following:

- (A) A tax map key description of the property;
- (B) A plot plan of the property, drawn to scale, with all existing and proposed structures shown thereon and any other information necessary to make a proper determination of the impacts relative to the specific request;
- (C) A written description of the proposed project and statement of the objectives;
- (D) An EA or EIS if required under Chapter 343, HRS, or when required by the Director;
- (E) A written description of the anticipated impacts of the proposed development on the Special Management Area, including but not limited to:
  - (i) Description of environmental setting;
  - (ii) The relationship of the proposed action to land use plans, policies, and control of the affected area;
  - (iii) The probable impact of the proposed action on the environment;
  - (iv) Any probable adverse environmental effects which cannot be avoided;
  - (v) Alternatives to the proposed action;
  - (vi) Mitigating measures proposed to minimize impact; and
  - (vii) Any irreversible and irretrievable commitment of resources.
- (F) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
  - (i) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;

- (ii) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
  - (iii) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (G) A written statement discussing the proposed development in relationship to the objectives and policies as provided by Chapter 205A, HRS;
  - (H) A statement of the valuation of the proposed use, activity or operation;
  - (I) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline;
  - (J) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used; and
  - (K) Any other plans or information required by the Director.
- (2) In the case of an applicant whose proposed development has been assessed, any information as to the areas of critical concern delineated by the Director.
  - (3) In the case where a multi-unit residential structure, containing more than ten units is proposed, the Director may require the applicant to submit a scale model or three-dimensional rendering of the proposed development and related improvements.
  - (4) Archaeological Resources [~~(one of the following)~~]:
    - ~~(A) — An archaeological inventory report containing significance assessments, effect determinations, and proposed mitigation commitments. The report should be completed pursuant to Department of Land and Natural Resources — State Historic Preservation Division (DLNR — SHPD) rules.~~

~~(B) — A "no effect" letter from the DLNR — SHPD.~~

~~(C) — A copy of letter written by the applicant to the DLNR — SHPD requesting a "no effect" letter, including supporting documentation, to which DLNR — SHPD has not responded after 30 days.]~~

(A) A written description and plot plan showing any known historic, archaeological, and cultural resources on the property.

(5) Five hundred (\$500) dollars filing fee to cover publication and other administration costs.

~~(5)~~(6) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.

(c) Posting of Signs for Public Notification

(1) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:

(A) The nature of the application;

(B) The proposed use of the property;

(C) The size of the property;

(D) The tax map key(s) of the property;

(E) That the public may contact the Department for additional information; and

(F) The address and telephone number of the Department.

(2) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.

(3) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings,

or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).

- (4) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

(d) Hearings

Upon acceptance of an SMA Use Permit application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of an SMA Use Permit application by the Director, or within a longer time period as agreed to by the applicant.

Promptly after the Commission fixing a date for the hearing, the applicant shall mail a notice of the hearing setting forth the time, date, and place of the hearing to the owners of properties, lessees, and others with a recorded possessory interest in property within three hundred feet of the perimeter boundary of the affected property and to any other person or agency that has made a written request to the Department for advance notice of the hearing, not less than twenty calendar days prior to the date set for the hearing. Prior to the date of the hearing, the applicant shall file with the Commission, through the Director, an affidavit or other similar proof of mailing of said notice. In addition to said notice and at least twenty calendar days prior to the date of the hearing, the Commission shall give public notice of the time, date, and place of the hearing at least [~~once statewide and~~] once in the County. Any failure to mail or to receive the public notice shall not invalidate the proceedings, provided further that the proceedings conform to the requirements of Chapter 91, HRS, as amended. These aforementioned notice requirements are not required for subsequent hearing dates upon the same application.

At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and Commission Rule 4 relating to Contested Case Procedures, where applicable.

Any such hearing shall, whenever possible, be held jointly and concurrently with other applicable hearings for the proposed development.

The applicant shall submit an additional two hundred fifty (\$250) dollars processing fee for each hearing continued at the request of the applicant. The applicant shall also notify all owners of properties, lessees, and other recorded possessory interests in the property within three hundred feet of the perimeter boundary of the affected property of the continued hearing.

(e) Grounds for Approval of Special Management Area Use Permits:

The Commission may permit the proposed development only upon finding that:

- (1) 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 is clearly outweighed by public health, safety, or compelling public interest~~;~~. Those adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each of which taken by itself might not have a significant adverse effect, and the elimination of planning options;
- (2) The development is consistent with the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS;
- (3) The development is consistent with the ~~General~~ general ~~Plan~~ plan, community plan, ~~Zoning~~ zoning ~~Code~~ code and other applicable ordinances, provided that a finding of consistency shall not preclude concurrent processing where a general plan, community plan, or zoning amendment may also be required.
- (4) The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
  - (A) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
  - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and

- (C) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.

Any development permitted shall be subject to reasonable terms and conditions set by the Authority in accordance with the Special Management Area guidelines as contained in Section 9-7.

(f) Decision and Order

- (1) Within sixty days following the close of the public hearing(s), or a longer time period as agreed to by the applicant, the commission shall either deny or approve the application. The decision, whether to grant or to deny the application, shall require a majority vote of the total membership of the Commission. In the event the Commission fails to render a decision to approve or deny within the prescribed time limit, the request shall be considered denied.

The applicant may request the Commission to defer action on the application. A majority vote of the total membership of the Commission is required if applicant requests to defer action on the application. In the event the Commission fails to render a decision to defer action within the prescribed time limit, the request shall be considered denied.

- (2) Notice of Decision: Notice of the decision shall be promptly given to the applicant by delivery thereof or by mailing or electronically mailing the notice to the applicant's last known address.
- (3) Reconsideration: In the event an application is denied due to the Commission's failure to render a decision within the period prescribed by ~~[paragraph F.1.]~~Section 9-11(f)(1) above, the applicant may, within ten calendar days after receipt of notice of the denial, request reconsideration of that decision. Upon such request, the Department shall place the application on the agenda of Commission for its reconsideration at the next meeting. In the event the Commission fails to render a decision by a majority vote of its total membership at the next meeting, the application shall be considered as denied.
- (4) Refiling: Whenever an application for a Special Management Area Use Permit has been denied, no new application for the same or similar development, covering all or any portion of the property involved in the application, shall be accepted by the Commission

through the Director for a period of two years from the effective date of the denial of the application; provided, however, that upon showing of a substantial change of circumstances the Commission may permit the filing of a new application prior to the expiration of such a two-year period.

(5) Appeals:

(A) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.

(B) If a contested case hearing is held, a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

(g) Amendments to a Special Management Area Use Permit or Conditions

(1) Application: The applicant may apply to the Commission through the Director for an amendment to the permit or condition(s) imposed by the Special Management Area Use Permit.

In the case of time extensions, the applicant shall set forth in writing: (a) the length of time requested; and (b) the reasons for the time extension.

In the case of additions, modifications, and/or deletions of conditions, the applicant shall file the request not less than sixty days prior to the expiration date of the time conditions, setting forth: (a) the condition to be amended; and (b) the reasons thereof.

The applicant shall also deposit with the Department the sum of two hundred fifty (\$250) dollars to cover publication and other administrative costs, along with the request.

(2) Notice and Hearing: The hearing and notice procedures shall be the same as under Section 9-11(c) and (d).

(3) Decision and Order: The procedures shall be the same as provided for under Section 9-11(f).



- (a) Artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purposes is prohibited when the light (1) directly illuminates the shoreline and ocean waters; or (2) is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-12(a) shall not apply to:
  - (1) A outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo, provided that (A) the outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or (B) the outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
  - (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

#### 9-13 Prohibitions

- (a) No special management area use permit or special management area minor permit shall be granted for structures that allow artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purpose when the light:
  - (1) Directly illuminates the shoreline and ocean waters; or
  - (2) Is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-13(a) shall not apply to special management area use permits for structures with:
  - (1) An outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo; provided that
    - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
    - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and

- (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

9-14 Special Management Area Emergency Permits

- (a) A Special Management Area Emergency Permit may be issued for emergency repairs to existing public utilities including but not limited to water, sewer, gas and electric transmission lines and highways, or similar emergencies which may otherwise not be exempt from the Special Management Area permit requirements. Upon finding that an emergency exists and requires immediate action, the Director shall issue a Special Management Area Emergency Permit subject to reasonable terms and conditions including an expiration date. Such permits shall be filed with the Commission in writing.
- (b) In cases of imminent substantial harm to public health, safety, or welfare in the County, including declared states of emergency by the Governor, the Mayor may waive the requirements of obtaining a permit pursuant to these Rules and Regulations.

9-15 Exemptions

This rule shall not apply to proposed developments within the Special Management Area for which final approval, or in the case of subdivisions, for which preliminary subdivision approval, was issued prior to the adoption of this rule, amendments thereto, or to the adoption of the Special Management Area Maps. SMA Use Permit applications filed prior to the adoption of amendments to this rule shall be exempted from any new procedures.

9-16 Revocation

- (a) A Special Management Area Use Permit may be revoked by the Commission in the event that:
  - (1) Any property owner who holds the permit sought to be revoked or at the request of any other person, with the property owner's consent, submits a written statement to the Commission verifying that the development approved under the permit issued has either not been established or has been abandoned.
  - (2) The Director submits a request if:
    - (A) There has been noncompliance with the conditions of the permit; or

- (B) The development authorized under the permit is creating a threat to the health or safety of the community.
- (b) Notice and Hearing: The Director shall provide written notice to the property owner and/or to the person who has been issued the permit prior to the Commission taking action to revoke the permit. The Commission shall conduct a hearing within a period of ninety calendar days from the receipt of the request by the applicant or Director. At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and Commission Rule 4 relating to Contested Case Procedures, where applicable.
- (c) Decision and Order: The procedures shall be the same as provided under Section 9-11(f) of this rule.
- (d) A property owner or other person affected by the revocation of a Special Management Area Use Permit ordered by the Commission, may, within thirty days after the date of the Commission's written order, appeal the Commission's action to the Third Circuit Court as provided by Chapter 91 of the [~~Hawai'i Revised Statutes~~]HRS. An appeal to the Third Circuit Court shall stay the provisions of the Commission's revocation order pending the final decision of the Third Circuit Court.
- (e) The Department is authorized to adopt rules to establish procedures for revocation of a Special Management Area Minor Permit.

#### 9-17 Penalties

- (a) Any person who violates any provision of this rule shall be liable for (1) a civil fine not to exceed \$100,000; or (2) for the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation.
- (b) In addition to any other penalties, any person who is violating any provision of this rule shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.
- (c) Any civil fine or other penalty provided under this rule may be imposed by the circuit court or by the Department after an opportunity for a hearing under Chapter 91, HRS.

#### 9-18 Complaint and Investigative Procedures

The Department shall adopt rules to establish procedures for investigating

complaints and alleged violations.

9-19 Administrative Fines

The Department is authorized to impose administrative fines in accordance with established rules.

9-20 Injunction

Any person violating any provision of this rule may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of this rule in a suit brought by the County.

9-21 Hearing Officer

- (a) The Commission may authorize a hearing officer to conduct a hearing for the purpose of taking testimony and to report his/her findings of facts and conclusions of law with his/her recommendation to the Authority on proceedings under the jurisdiction of the Commission as provided by this rule.
- (b) The notice and hearing requirements for hearings conducted by a hearing officer shall be same as provided under Sections 9-11(c), 9-20 (b), 9-21 (a) (2), or 9-21 (b)(2), as may be applicable.

~~[(b)]~~(c) Post hearing procedures for hearings conducted by a hearing officer:

- (1) Recommendation of hearing officer: Upon completion of taking of the evidence the hearing officer shall prepare a report setting forth findings of fact, conclusions of law, and the reasons therefor, and a recommended order and submit the report of the case to the Commission.
- (2) Contents of the record: The record shall include the petition, transcripts of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the persons involved, objections to conduct of the hearing and the report of the hearing officer and all other matters placed into evidence.
- (3) Within forty-five calendar days after the conclusion of the hearing, the hearing officer shall complete the report and submit it to the Commission and to all persons involved in the proceedings.

~~[(e)]~~(d) Exceptions to the Hearing Officer's Report and Recommendation:

- (1) Within ten working days after receipt of the report and

recommendation by the hearing officer, a person involved in the proceedings may submit to the Authority his exceptions to the report and his reasons in support thereof.

- (2) The exception shall:
  - (A) Set forth specifically the procedure, fact, law or policy to which exceptions are taken;
  - (B) Identify the part of the hearing officer's report and recommended order to which objections are made; and
  - (C) State specifically the reasons for exceptions to the ruling, finding, conclusion, or recommendation.

~~[(d)]~~(e) Testimony Before the Commission:

- (1) If a person involved in the proceedings desires to testify before the Authority, a written request with reasons therefor shall accompany the exceptions and the Commission may grant such request.
- (2) The Commission may on its own motion re-open the hearing to allow the taking of additional testimony and further evidence.

~~[(e)]~~(f) Commission Action:

- (1) In the event no statement of exception is filed, the Commission may proceed to reverse, modify or adopt the recommendation of the hearing officer.
- (2) Upon the submittal of exceptions and the taking of further evidence, if any, Commission shall render its decision pursuant to Rule 9-11(e).

9-22 Petition for the Adoption, Amendment or Repeal of Rule 9 Special Management Area Rule of the County of Hawai'i

(a) Petition

Any person may petition the Commission through the Director requesting the adoption, amendment or repeal of any provision of this rule.

The petitioner shall be responsible for submitting the following to the Director:

- (1) The completed petition including:

- (A) A statement of the nature of the petitioner's interest.
  - (B) A draft of the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.
  - (C) An explicit statement of the reasons in support of the proposed rule, amendment or repeal. Said reasons shall include a discussion of the relationship of the proposed change with Chapter 205A, HRS, Relating to Coastal Zone Management, and other applicable State and County Ordinances or regulations including the General Plan.
- (2) Five hundred (\$500) dollars filing fee to cover publication and other administrative costs.
- (b) Notice and Hearing
- The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) and (d), provided further that the Commission shall conduct a public hearing within a period of ninety calendar days from the receipt of a properly filed petition.
- (c) Decision and Order
- The procedures shall be the same as under Section 9-11(f).

9-23 Amendment of Special Management Area (SMA) Maps

- (a) Amendments initiated by the Director:
  - (1) Initiation:
    - (A) The Director may at any time initiate amendments to the Special Management Area Boundaries.
    - (B) The Commission, by a two-thirds (2/3) vote of its total membership, may direct the Director to initiate amendments to the Special Management Area boundaries.
    - (C) The Director shall give notice of his intent to amend the Special Management Area boundaries to the Commission, the general public and the State Office of Planning, stating the initiation date and estimated completion date of review. The Director, upon completion of his review, shall submit the proposed amendments to the Commission.

(2) Notice and Hearing:

The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) of this rule, provided further that the Commission shall conduct a hearing within a period of sixty calendar days from the submittal of the proposed amendments by the Director.

(3) Grounds for Approval of Special Management Area Boundary Amendments:

The Commission may amend the Special Management Area boundaries only upon finding that the amendments will further the objectives and policies as provided by Chapter 205A, HRS, and will be consistent with the General Plan and other applicable ordinances.

(4) Decision and Order:

The procedures shall be the same as under Section 9-11(f).

(b) Special Management Area Boundary Amendments Initiated by the General Public:

(1) Application:

Any person may apply to the Commission through the Director requesting the amendment of the Special Management Area boundaries.

The applicant shall submit the following to the Department:

(A) The completed application including the following:

- (i) A statement of the nature of the applicant's interest.
- (ii) A description of the properties involved in sufficient detail to determine the precise location.
- (iii) An explicit statement of the reasons in support of the request including a discussion of how the amendment will further the Special Management Area objectives and policies as well as be consistent with the General Plan and other applicable ordinances.

(iv) A statement discussing the proposed use of the parcel and any other information necessary to render a proper decision relating to the specific request.

(B) Five hundred (\$500) dollars filing fee to cover publication and other administrative costs.

(2) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) and (d).

(3) Grounds for Approval of Special Management Area Boundary Amendments:

The Grounds for approval of Special Management Area boundary amendments shall be the same as provided for in Section [~~9-21(a)(3)~~] 9-11(e).

(4) Decision and Order:

The procedures shall be the same as provided for in Section 9-11(f).



PLANNING DEPARTMENT  
COUNTY OF HAWAII

RULES OF PRACTICE AND PROCEDURE

**RULE 11. SHORELINE SETBACK**

**11-1 Authority**

Pursuant to the authority conferred upon the Planning Department by §205A[-43]Part III, Hawai'i Revised Statutes (HRS), the rules hereinafter contained are established and shall apply to lands within the shoreline setback area.

**11-2 Purpose**

The growing population and expanding development have brought about numerous cases of encroachment of structures upon the shoreline and within the nearby shoreline areas. Many of these structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks. The purpose of this rule is to establish authority, criteria and procedures for the establishment and enforcement of the shoreline setback line and shoreline setback area and for the review of all activities or structures proposed within the shoreline setback area in accordance with the requirements of this rule and Chapter 205A-[43 thru 44]Part III, [Hawai'i Revised Statutes]HRS.

**11-3 Definitions**

(a) "Activity" means any landscaping, excavating, grubbing, grading, filling or stockpiling of earth materials, including sand, coral, coral rubble, rocks, soil, or marine deposits.

(b) "Average lot depth" means the measurement obtained by adding the length of the two sides of a lot which are at or near right angles with the shoreline to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the result sum by three. In order to obtain a more accurate average lot depth, additional lengths may be utilized in the calculation. (SEE EXAMPLE A)]

(b) "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.

(c) “Buildable area” means the area of a lot excluding the shoreline setback, required yards, and flag stems (poles).

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

~~(d)~~(e) “Lot” means a parcel, tract, or area of land established by subdivision or as otherwise lawfully established prior to the adoption of the Subdivision Control Code and accepted by the Planning Department.

~~(e)~~(f) “Minor structure” shall not alter the existing grade of the shoreline setback area and shall be limited to landscape features (i.e., benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, etc.); walkways for access; and sprinkler systems.

~~(f)~~(g) “Minor activity” means an activity that does not alter the existing grade of the shoreline setback area and may include activities such as landscaping and minor clearing (grubbing) of vegetation.

~~(g)~~(h) “Planning Commission” means the planning commission of the County of Hawai‘i.

~~(h)~~(i) “Planning Department” means that agency of the County of Hawai‘i consisting of the planning director and the necessary staff.

(j) “Rebuild” means the reconstruction of a lawfully existing structure when the reconstruction is valued by a licensed professional engineer or architect at more than fifty percent of the replacement cost of the structure.

(k) “Repair” means the fixing, renovation, improvement, or restoration of any part of a lawfully existing structure, but not the entire structure, solely for the purpose of its maintenance and which does not result in an addition to, or enlargement or expansion of, the lawfully existing structure. “Repair” includes, but is not limited to alteration of floors, roofs, walls, or the supporting structure of a building or the rearrangement of any of its component parts.

~~(i)~~(l) “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 vegetation growth, or the upper limit of debris left by the wash of the waves, which has been certified by the Board of Land and Natural Resources in accordance with its rules.

~~[(j)]~~(m) “Shoreline setback area” shall include all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this rule extends seaward of the shoreline, then the term “shoreline setback area” shall include the entire structure.

~~[(k)]~~(n) “Shoreline setback line” means that line established by the Planning Department running inland from and parallel to the certified shoreline at a horizontal plane.

~~[(l)]~~(o) “Structure” includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

~~[(m)]~~(p) “Vegetation” means any plant, tree, shrub, grass, or groups, clusters or patches of the same, naturally rooted and growing.

#### **11-4 Shoreline Certification, Exceptions and Waivers**

- (a) The shoreline is certified by the chairperson of the Board of Land and Natural Resources pursuant to its adopted ~~[rules]~~ Hawai‘i Administrative Rules (HAR). No determination of a shoreline shall be valid for a period longer than twelve months, except where the shoreline is fixed by man-made structures, which have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and structure; in which case the certified shoreline survey shall be valid so long as the man-made structure remains intact and unaltered.
- (b) For the purpose of establishing the shoreline setback line, the Planning Department may, in consultation with the Department of Land and Natural Resources, require the certified shoreline survey to extend a minimum 40 feet laterally beyond the affected property's shoreline frontage in cases where the inland reaches of an adjacent property's shoreline frontage affect the determination of the shoreline setback area.
- (c) The Planning Department may waive the certification requirement in cases where there may be special or unusual physical circumstances or conditions of the land or where a structure or activity is proposed at a considerable distance inland. Setback lines shall be conservatively, but reasonably established. The Planning Department may require a survey map of the subject area depicting physical and geographical conditions to assist in

making a determination.

#### **11-5 Establishment of Shoreline Setback Lines**

(a) Except as otherwise provided in this section, all lots which abut the shoreline shall have a minimum shoreline setback line of forty feet (SEE EXAMPLE B).

(b) Exceptions:

(1) A lot which was created (final subdivision approval or a legal lot of record as determined by the Planning Department) prior to the date of adoption of this rule shall have a minimum shoreline setback line of twenty feet when one of the following exists:

(a) When the average lot depth of a parcel is one hundred feet or less (SEE EXAMPLE C); or

(b) When the buildable area of the parcel is reduced to less than fifty percent of the parcel after applying the forty-foot shoreline setback line and all state and county requirements of the parcel (SEE EXAMPLE D).]

(a) The minimum shoreline setback line shall not be less than forty (40) feet inland from the shoreline.

#### **11-6 Structures and Activities Prohibited within the Shoreline Setback Area**

(a) The mining or taking of sand, dead coral or coral rubble, rocks, soil or other beach or marine deposits from the shoreline setback area ~~in excess of one gallon per person per day~~; and

(b) All structures and activities which do not qualify under section 11-7(a) through (c).

(c) A shoreline setback variance may be granted for a structure or activity otherwise prohibited in this rule if it is necessary and ancillary to the uses and activities listed in Planning Commission Rule 8 (Shoreline Setback Variance, Section 8-11).

#### **11-7 Structures or Activities Permitted within the Shoreline Setback Area**

(a) The following structures or activities may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department:

(1) The mining or taking of sand, dead coral or coral rubble, rocks, soil or other beach or marine deposits (such as driftwood, shells, beach glass, glass floats, or seaweed) from the shoreline setback area, ~~not in excess of one gallon per person per day, for reasonable, personal,~~

~~noncommercial use];~~

- (2) The clearing of sand, dead coral or coral rubble, rocks, soil or other beach or marine deposits from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under Section 46-11.5, ~~[Hawai'i Revised Statutes]~~HRS, provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity;
- (3) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing for purposes under Section 46-12, ~~[Hawai'i Revised Statutes]~~HRS; provided that the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity;
- (4) A minor structure or activity approved in accordance with Section 11-8;
- (5) A structure or activity permitted through the issuance of a shoreline setback variance from the Planning Commission;
- (6) Structures which were completed by or activities which commenced prior to June 22, 1970;
- (7) The structure or activity received a building permit, Board of Land and Natural Resources' approval, Special Management Area Use Permit/approval and/or a shoreline setback variance prior to June 16, 1989;
- (8) Structures and activities necessary for or ancillary to continuation of existing agriculture or aquaculture activity in the shoreline setback area prior to June 16, 1989;
- (9) Work being done consists of maintenance, repair, ~~[reconstruction,~~ and minor additions to or alterations of legal, publicly owned boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes;
- (10) The structure or activity was determined by the Planning Department to be outside the shoreline setback area when it received legal approval(s) (i.e., a building permit, Special Management Area Use Permit or board of land and natural resources approval).
- (11) The exercise of traditional cultural practices as authorized by law or as permitted by the Planning Department pursuant to article XII, section 7, of the Hawai'i State Constitution.

(12) For the response to a public emergency or a state or local disaster when an emergency proclamation has been issued by the Mayor or Governor.

(b) Structures or activities that qualify under section 11-7 (a)(6) through (10) may be repaired in conformance with plans approved by the Planning Department, but shall not be enlarged, rebuilt, or replaced within the shoreline area without a shoreline setback variance.

(c) Structures or activities that qualify under section 11-7(a)(6) through (10) may be routinely maintained.

**11-8 Determination of Minor Structure and Minor Activity**

A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.

(a) A request for a minor structure or activity determination shall be submitted to the Planning Department and shall be accompanied by applicable information to assist in the determination, which could include but not be limited to a certified shoreline survey, construction plans, a list of proposed plants and their growth at maturation, existing and finished contours, photographs of the shoreline setback area, an environmental assessment, written reasons addressing the criteria set forth in Section 11-8 and other information required by the Planning Department.

(b) Minor structures and activities shall be completed within one year from the date of the Planning Department's minor structure or activity determination or from the approval date of the last discretionary permit, whichever is last.

**11-9 Shoreline Setback Variance Application**

An application for a shoreline setback variance shall be filed with the Planning Commission in accordance with its rule of practice and procedure. The Planning Department shall review the variance application and plans of all applicants who propose any structure, activity, or facility that would be prohibited without a variance pursuant to this rule. The Planning Department may require that the plans be supplemented by accurately mapped data and photographs showing natural conditions and topography relating to all existing and proposed structures and activities.

**11-10 Compliance with Environmental Impact Statement Regulations (Chapter 343, HRS)**

An environmental assessment, prepared in accordance with the requirements of Chapter 343, [~~Hawai'i Revised Statutes (HRS)~~]HRS and Title 11, Chapter 200.1

Hawai'i Administrative Rules (HAR), shall accompany the filing of a shoreline setback variance application with the Planning Commission. The Planning Department shall be the approving agency of all environmental assessments prepared in accordance with this rule. A shoreline setback variance application shall not be considered complete until such time the Planning Department has complied with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1 HAR.

#### **11-11 Waiver of Public Hearing and Action**

(a) The Planning Department may waive a public hearing and take action on a variance application for the following, provided public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, shall be provided:

(1) Stabilization of shoreline erosion by moving sand entirely on public lands;

(2) Protection of a [structure determined by the Planning Department to be legally constructed, which costs more than \$20,000;] legal structure 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 authority; provided that the structure or public facility is at risk of immediate [danger] damage from shoreline erosion as determined by the Planning Department, in consultation with appropriate agencies (i.e., U.S. Army Corps of Engineers, Department of Public Works)[;] 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

~~(3)~~(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.

(b) An applicant who seeks processing under Section 11-11 shall make the request in writing upon submittal of the variance application.

(c) The Planning Department may deny the public hearing waiver in which case the variance application shall be heard and noticed by the Planning Commission in accordance with its rule of practice and procedure.

#### **11-12 Enforcement**

(a) The Planning Department shall enforce this rule.

- (b) Any structure or activity prohibited within the shoreline setback area that has not received appropriate approvals or a shoreline setback variance or that has not complied with conditions of said variance shall be removed or corrected. No other state or county permit or approval shall be construed as a variance.
- (c) Where the shoreline is affected by [~~a manmade~~] an artificial structure that has not been authorized with government agency permits required by law, and if any part of the structure is on private property, then for purposes of enforcement of this rule, the structure shall be construed to be entirely within the shoreline setback area.
- (d) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under Chapter 183C, HRS shall not be diminished by an artificial structure in violation of this rule.

### **11-13 General Enforcement Procedures**

- (a) Issuance of Notice of Violation and Order.

The landowner and/or the alleged violator shall be notified by the Planning Department by certified or registered mail or by personal service of any alleged violation of this rule, any permit issued pursuant thereto, or any condition of a shoreline setback variance. The Notice of Violation and Order shall include, but not be limited to, the specific section of the rule which has been violated; the nature of the violation; and the remedy(ies) available. The Notice of Violation and Order may also require that the violative activity cease and desist; that a civil fine be paid not to exceed \$10,000 per violation; and that a civil fine be paid not to exceed \$1,000 per day for each day in which the violation persists.

The Notice of Violation and Order shall advise the person that the Order shall become final thirty days after the date of its receipt, unless written request for a negotiated settlement or a hearing before the Board of Appeals is mailed or delivered to the department within said thirty days.

- (b) Negotiated Settlement

If the violator seeks a negotiated settlement with the Planning Department, but waives the right to a hearing, the Planning Department, in consultation with the Office of the Corporation Counsel, shall be authorized to enter into a settlement agreement with the landowner or, if appropriate, the violator, which will cure the violation, set the fine, and allow for inspection by the Planning Department.

- (c) Right to Hearing



A request for hearing shall be considered timely if a written request is delivered to the Planning Department within said thirty days. Upon receipt of a request for a hearing, the Planning Department shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the Board of Appeals in accordance with the provisions of Chapter 91, [~~Hawaii Revised Statutes~~]HRS and its rules of practice and procedure.

(d) **Judicial Enforcement of Order**

The Planning Department, in consultation with the Office of the Corporation Counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.

Nothing in this section shall prohibit the Planning Department, through the Office of the Corporation Counsel, from filing an order or motion directly with the Court in the event that public health and safety may be at risk.

**11-14 Penalties**

- (a) Any person who violates any provision of this rule shall be liable for an initial civil fine not to exceed \$10,000 per violation and a maximum daily fine of \$1,000 until the violation is corrected. A civil fine may be imposed by the department after an opportunity for a hearing under Chapter 91, [~~Hawaii Revised Statutes~~]HRS, unless said hearing is otherwise waived.
- (b) In specifying the amount of the civil and daily fines, the Planning Department shall consider the following:
  - (1) The nature and degree of the violation;
  - (2) Whether there are multiple violations; and
  - (3) Whether it is a repeated violation.
- (c) A shoreline setback variance application filed with the Planning Commission subsequent to an applicant's having completed the structure or activity, or having been cited for the activity or construction without having obtained said variance, shall not stay any order to pay civil fines.

**11-15 Appeals**

An administrative decision of the Planning Department shall be appealable to the Board of Appeals in accordance with its rules of practice and procedure.

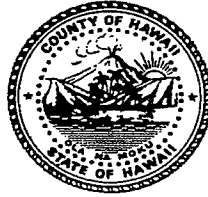
**11-16 Severability**

If any portion of this rule, or its application to any person or circumstance, shall be held unconstitutional or invalid, the remainder of this rule and the application of such portion to other persons or circumstance shall not be affected thereby.

**Cross-reference:**

Rule 8. SHORELINE SETBACK VARIANCE, Planning Commission Rules of Practice & Procedure

*JON HENRICKS*  
County Clerk



*AARON BROWN*  
Deputy County Clerk

**County of Hawai'i**  
**Office of the County Clerk**  
25 Aupuni Street, Suite 1402 • Hilo, Hawai'i 96720  
(808) 961-8255 • Fax (808) 961-8912

June 23, 2023

The Honorable Sylvia Luke  
Lieutenant Governor  
State of Hawai'i  
415 S. Beretania St.  
Honolulu, Hawai'i 96813

Dear Lt. Governor Luke:

Pursuant to HRS 91-4, enclosed is an original and one copy of the Hawai'i County Planning Commission Rules of Practice and Procedure, Rule 8 and Rule 9, County of Hawai'i, State of Hawai'i, received by this office on June 22, 2023.

We trust that this submission is in order.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Henricks".

Jon Henricks  
County Clerk  
County of Hawai'i

JH/tk

Enclosures

xc: Ombudsman  
State Law Library  
Corporation Counsel  
Planning Department

COUNTY OF HAWAI‘I  
PLANNING  
COMMISSION

RULES OF  
PRACTICE AND  
PROCEDURE

RULES 1-16

COUNTY OF HAWAI‘I  
PLANNING COMMISSION

RULES OF PRACTICE AND PROCEDURE

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## RULE 8. SHORELINE SETBACK VARIANCE

### 8-1 Authority

Pursuant to authority conferred upon the Commission by Chapter 205A, Hawai'i Revised Statutes (HRS), as amended, the rules hereinafter contained are hereby established and shall apply to all lands within the shoreline setback area.

### 8-2 Purpose

The growing population and expanding development have brought about numerous cases of encroachment of structures upon the shoreline and within the nearby shoreline areas. Many of these structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks. The purpose of this rule is to establish authority, criteria and procedures for the review of all activities or structures proposed within the shoreline setback area which requires a Shoreline Setback Variance in accordance with the requirements of this rule and Chapter 205A Part III, HRS.

### 8-3 Definitions

For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

- (a) "Activity" means any landscaping, excavating, grubbing, grading, filling or stockpiling of earth materials, including sand, coral, coral rubble, rocks, soil, or marine deposits.
- (b) "Authority" means the county planning commission. The authority may, as appropriate, delegate the responsibility for administering this rule, as stated in this rule.
- (c) "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.

- (d) “Coastal hazards” means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.
- (e) “Department” means the planning department of the County of Hawai‘i.
- (f) “Lot” means a parcel, tract, or area of land established by subdivision or as otherwise lawfully established prior to the adoption of the Chapter 23 (Subdivision Code), Hawai‘i County Code 1983 (2016 Edition, as amended) and accepted by the Department.
- (g) “Practicable alternative” means an alternative to the proposed project which is available and capable of being done, taking into consideration existing technology and logistics, and which would accomplish the basic purposes of the project while avoiding or having less adverse impact on the shoreline area.
- (h) “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, which has been certified by the Board of Land and Natural Resources in accordance with its rules.
- (i) “Shoreline setback area” shall include all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this rule extends seaward of the shoreline, then the term "shoreline setback area" shall include the entire structure.
- (j) “Shoreline setback line” means that line established by the Department in accordance with the requirements of Department Rule No. 11 regarding Shoreline Setback, running inland from and parallel to the certified shoreline at a horizontal plane.
- (k) “Structure” includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

8-4 Variance Application and Content

An application for a shoreline setback variance shall be filed with the Commission, through the Department, and shall include:

- (a) A non-refundable filing and processing fee of five hundred (\$500) dollars.
  - (1) Application form;
  - (2) Description of the property in sufficient detail, including the tax map key identification, location map, and land area;
  - (3) Written description of the proposed project, including a statement as to how the request complies with the criteria within Section 8-11;
  - (4) An environmental assessment or environmental impact statement consistent with the requirements of Chapter 343, HRS, which may include, but not be limited to, flood hazard engineering studies of subject property and project's impact analysis on adjacent properties, an archaeological survey, floral and faunal surveys, photographs, existing and proposed contours; and
  - (5) A site plan of the shoreline setback area, drawn to scale, showing:
    - (A) Existing natural and man-made features and conditions within the shoreline setback area;
    - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
    - (C) The certified shoreline;
    - (D) The shoreline setback line;
    - (E) Contours at a minimum interval of five feet unless waived by the Commission;
    - (F) Proposed development and improvements showing new conditions.
- (b) A copy of the certified shoreline survey map of the property.
- (c) Detailed justification of the proposed project, which addresses the criteria

and conditions set forth in Section 8-11.

- (d) A list of all properties by tax map key located within 300 feet of the perimeter boundary of the property under consideration.
- (e) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.
- (f) Any other information required by the Commission.

8-5 Posting of Signs for Public Notification

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
  - (1) The nature of the application;
  - (2) The proposed use of the property;
  - (3) The size of the property;
  - (4) The tax map key(s) of the property;
  - (5) That the public may contact the Department for additional information; and
  - (6) The address and telephone number of the Department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
- (d) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been posted in compliance

with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

8-6 Incomplete Application

The Commission, through the Department shall neither accept nor process an application which is incomplete as to form and content. An incomplete application shall be returned with a written explanation of its deficiencies.

8-7 Compliance with Chapter 343, Hawai'i Revised Statutes

An environmental assessment or environmental impact statement, prepared in accordance with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawai'i Administrative Rules (HAR), shall accompany the filing of a shoreline setback variance application with the Commission. The Department, on behalf of the Commission, shall be the accepting agency of all environmental assessments and/or environmental impact statements, if appropriate, which are prepared in accordance with this rule. A shoreline setback variance application shall not be considered complete until such time the Department has complied with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, HAR.

8-8 Public Hearing

- (a) Except as otherwise provided in this rule, the Commission shall conduct a public hearing within a period of ninety days from the date of acceptance of a complete application, or within a longer time period as agreed to by the applicant. Prior to acceptance of an application, the applicant shall comply with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, HAR. In the case of a finding of no significant impact (FONSI) and final environmental impact statements, the Office of Planning and Sustainable Development, Environmental Review Program Periodic Bulletin publication date will be used as compliance. For exemptions, the date of determination will be used.
- (b) At least twenty days prior to the date of the public hearing, the Commission shall publish a notice of the hearing in at least two daily newspapers of general circulation in the county which includes the following:
  - (1) Name of the applicant;
  - (2) The location of the property involved, including its physical address and tax map key number;
  - (3) Nature of the variance sought;

- (4) Date, time, and place of the public hearing.
- (c) Promptly after the Commission's fixing a date for the hearing but not less than ten days prior to the date of the hearing, the applicant shall mail a notice of the hearing to all property owners within three hundred feet of the affected property. Reasonable notice shall also be provided to those persons who have requested such notification of the applicant. Prior to the date of the hearing, the applicant shall file with the Commission proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like. However, any failure to mail or to receive the written notice shall not invalidate the proceedings.
- (d) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 8-8(c). An additional two hundred fifty (\$250) dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

8-9 Decision

- (a) Within sixty days following the close of the public hearing(s), or within a longer time period as agreed to by the applicant, the Commission shall render a decision to approve or deny the application.
- (b) Notice of the decision shall be promptly given to the applicant by delivery thereof.
- (c) Whenever an application for a variance has been denied, no new application for the same or similar development, covering all or any portion of the property involved in the application, shall be accepted by the Commission for a period of one year from the effective date of the denial of the application; provided, however, that upon showing of a substantial change of circumstances the Commission may permit the filing of a new application prior to the expiration of such a one year period.

8-10 Waiver of Public Hearing and Action

- (a) The Commission hereby delegates to the Department the authority to waive a public hearing and to take action on a variance application for:
  - (1) Stabilization of shoreline erosion by moving sand entirely on public lands;
  - (2) Protection of a structure determined by the Department to be legally constructed, which costs more than \$20,000; provided the structure



is at risk of immediate damage from shoreline erosion as determined by the Department, in consultation with appropriate agencies (i.e. U.S. Army Corps of Engineers, Department of Public Works); or

- (3) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which result in little or no interference with natural shoreline processes.
- (b) An applicant who seeks processing under Section 8-10 shall make the request in writing upon submittal of the variance application.
- (c) The Department may deny the public hearing waiver and the application shall be heard and noticed by the Commission in accordance with Section 8-8.
- (d) The Department shall promulgate rules to administer Section 8-10.

#### 8-11 Criteria for Approval of a Variance

- (a) A variance may be granted for a structure or activity otherwise prohibited by Planning Department Rule 11 (Shoreline Setback) and Chapter 205A, HRS if the Commission finds in writing, based on the record, that the proposed structure or activity is necessary for or ancillary to:
  - (1) Cultivation of crops;
  - (2) Aquaculture;
  - (3) Landscaping, provided that the Commission finds that the proposed structure or activity will not adversely affect beach processes, will not impede public access, and will not artificially fix the shoreline.
- (b) Shoreline-dependent Facility Standard.

A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

- (1) Drainage;
- (2) Boating, maritime, or watersports recreational facilities;
- (3) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the

authority 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.

(c) Public Interest Standard.

A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

- (1) Facilities or improvements by public agencies or public utilities regulated under Chapter 269, HRS;
- (2) Private facilities or improvements that are clearly in the public interest.

(d) Hardship Standard.

(A) A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

- (1) Private facilities or improvements that will not adversely affect beach processes, result in flanking shoreline erosion, or artificially fix the shoreline; provided that the Commission may consider any hardship that will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (2) Private facilities or improvements that may artificially fix the shoreline; provided that the Commission may consider hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; provided further that a variance to artificially fix the shoreline shall not be granted in areas with 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.

(B) A structure or activity may be granted a variance upon grounds of hardship only if:

- (i) The applicant would be deprived of reasonable use

of the land if required to comply fully with this rule;  
and

- (ii) The request is due to unique circumstances and does not draw into question the reasonableness of this rule; and
  - (iii) The request is the practicable alternative which best conforms to the purpose of this rule.
- (C) Before granting a hardship variance, the Commission must determine that the request is a reasonable use of the land. The determination of the reasonableness of the use of land shall consider factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.
- (D) If a structure is proposed to artificially fix the shoreline, the Commission must also determine that shoreline erosion is likely to cause hardship if the structure is not allowed within the shoreline setback area.
- (E) Hardship shall not be determined as a result of zoning amendments, planned unit development (PUD) permits, cluster plan development (CPD) permits, or subdivision approvals after June 16, 1989.
- (e) No variance shall be granted unless appropriate conditions are imposed as applicable:
  - (1) To comply with Chapters 10 and 27 of the Hawai'i County Code relating to Erosion and Sedimentation Control and Flood Control, respectively;
  - (2) To maintain safe lateral access along the shoreline or adequately substitute for its loss;
  - (3) To minimize risk of adverse impacts on beach processes;
  - (4) To minimize risk of structures failing and becoming loose rocks, sharp or otherwise dangerous debris, or rubble on public property; and
  - (5) To minimize adverse impacts on public views to, from, and along the shoreline.

8-12 Amendments to a Variance

- (a) The applicant may apply to the Commission through the Department for an amendment to the variance.
- (b) In the case of additions, modifications, and/or deletions to the variance or conditions, the applicant shall submit the written request, which includes:
  - (1) The affected section of the variance or condition;
  - (2) The specific amendment requested;
  - (3) The reasons for the request; and
  - (4) Any other information required by the Commission.
- (c) In the case of time extensions, the applicant shall file the request not less than ninety days prior to the expiration date of the time conditions, setting forth:
  - (1) The affected condition;
  - (2) The length of time requested;
  - (3) The reasons for the request; and
  - (4) Any other information required by the Commission.
- (d) Upon submitting a request as set forth in Section 8-12(b) or (c), with the exception of administrative time extensions, the applicant shall also file a two hundred fifty (\$250) dollar processing fee.
- (e) The hearing and notice procedures and action shall be the same as under Sections 8-5, 8-8, and 8-9.

8-13 Administration and Enforcement

The Department is responsible for the processing of all variance applications and is also responsible for the enforcement of all conditions and requirements associated with a variance issued in accordance with this rule.

8-14 Appeals

- (a) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person

desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.

- (b) If a contested case hearing is held a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

8-15 Revocation

- (a) A Shoreline Setback Variance may be revoked by the Director in the event that any property owner who holds the variance sought to be revoked or any other person, with the property owner's consent, submits a written statement to the Director verifying that the development approved under the variance issued has either not been established or has been abandoned.
- (b) A Shoreline Setback Variance may be revoked by the Commission in the event that:
  - (1) The Director requests the revocation if:
    - (A) There has been noncompliance with the conditions of the variance; or
    - (B) The use authorized under the variance is creating a threat to the health or safety of the community.
  - (2) The proceeding to revoke a Shoreline Setback Variance, upon request of the Director, shall require written notice to the property owner and to the person who has been issued the variance prior to the Commission taking action to revoke the variance.

## RULE 9. SPECIAL MANAGEMENT AREA

### 9-1 Authority

Pursuant to authority conferred by Chapter 205A, Hawai‘i Revised Statutes (HRS), the rule hereinafter contained is hereby established and shall apply to all lands within the Special Management Area of the County of Hawai‘i.

### 9-2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai‘i. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

### 9-3 Title

This rule shall be known as the “Special Management Area Rule of the County of Hawai‘i.”

### 9-4 Definitions

For the purpose of this rule, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

- (a) “Artificial light” or “artificial lighting” means the light emanating from any fixed human-made device.
- (b) “Assessment” means an evaluation by the Department of a proposed use, activity, or operation to determine whether a Special Management Area Use Permit is required.
- (c) “Authority” means the county planning commission. The authority may, as appropriate, delegate the responsibility for administering this rule, as stated in this rule.
- (d) “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.

- (e) "Coastal hazards" means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.
- (f) "Crops" means agricultural produce or part(s) of plants or trees cultivated for commercial or personal use including but not limited to the raising of livestock.
- (g) "Cultural" pertains to traditional and customary practices and usage of resources to fulfill responsibilities and rights possessed and exercised by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.
- (h) "Department" means the planning department of Hawai'i County.
- (i) "Development" means any of the following uses, activities, or operations on land or in or under water within the Special Management Area:
  - (1) "Development" includes the following:
    - (A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
    - (B) Grading, removing, dredging, mining, or extraction 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 intensity of use of water, ecology related thereto, or of access thereto; and
    - (E) Construction, reconstruction, or alteration of the size of any structure.
  - (2) "Development" does not include the following uses, activities or operations:
    - (A) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred (7,500) 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. Floor area shall be the total area of all floors of a building(s) associated with the single-family residence, including a

basement and accessory structures, measured along the exterior walls of such building(s). The floor area of a building(s), or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above;

- (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) Repair and maintenance of 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 or relating to existing uses;
- (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan;
- (H) Use of any land for the purpose of cultivating, planting, growing, and harvesting 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;
- (I) Transfer of title of land;
- (J) Creation or termination of easements, covenants, or other rights in structures or land;
- (K) Subdivision of land into lots greater than twenty acres in size;
- (L) The amendment of the General Plan, State Land Use Boundary amendments and changes of zone;
- (M) Subdivision of a parcel of land into four or fewer parcels



when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

- (N) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
  - (O) Structural and non-structural improvements to existing single-family residences, where otherwise permissible;
  - (P) Non-structural improvements to existing commercial or non-commercial structures;
  - (Q) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens; and
  - (R) Plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the Division of Boating and Ocean Recreation of the State Department of Land and Natural Resources.
- (3) Any proposed use, activity, or operation listed in Section 9-4(i)(2) shall be deemed to be “Development” until the Director has determined it to be exempted from the definition of “development.”
- (4) Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as “development” for the purpose of this rule.
- (j) “Directly illuminate” means to illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.
- (k) “EIS” means an informational document prepared in compliance with Chapter 343, HRS, and the Hawai‘i Administrative Rules, Title II, Chapter 200.1 (Environmental Impact Statement Rules). An EIS discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.

- (l) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the seawater is measurably diluted with fresh water derived from land drainage.
- (m) "Native Hawaiian Rights" means those rights defined in and protected under HRS 1-1, HRS 7-1, HRS 174C-101, Article XII, Section 7 of the Hawai'i State Constitution, and in rulings of Hawai'i case law."
- (n) "Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.
- (o) "Owner" means all equitable and legal holders or lessees of real property. Lessees shall present certification of approval from the legal owner.
- (p) "Person" means and includes any individual, organization, partnership, or corporation, including any utility and any agency of government.
- (q) "Petitioner" means and includes any person who seeks permission or authorization which the Commission may grant under this rule.
- (r) "Public Works Director" means Director of the Department of Public Works of the County of Hawai'i.
- (s) "Shoreline" means the upper reaches of the wash of 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.
- (t) "Shoreline Survey" means the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a registered land surveyor in the State of Hawai'i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chairman of the Board of Land and Natural Resources.
- (u) "Single-Family Residence" means a detached building designed for and/or used as the complete facility for cooking, sleeping and living area of a single family only and occupied by no more than one family. Single family residences may include uses or structures normally considered accessory to the single family facilities provided that any such uses or structures are situated on the same lot or building site and are in compliance with all requirements of any county or state regulation, statute, or ordinance. A single family shall include all persons living in a dwelling related by blood, marriage or by adoption or a group comprised of not more than five persons

not related by blood, marriage or by adoption.

- (v) "Special Management Area" means the land extending inland from the shoreline as delineated on the maps filed with the Commission as of June 8, 1977, or as amended pursuant to Section 9-21.
- (w) "Special Management Area Emergency Permit" means an action by the Director authorizing development in cases of emergency requiring immediate action to prevent substantial harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that those structures were previously found to be in compliance with requirements of the National Flood Insurance Program.
- (x) "Special Management Area Minor Permit" means an action by the Director authorizing development, the valuation of which is not in excess of \$500,000 and which has no cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.
- (y) "Special Management Area Use Permit" means an action by the Commission authorizing development, the valuation of which exceeds \$500,000 or which may have a cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.
- (z) "Structure" means and includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.
- (aa) "Use" means any purpose for which a structure or a tract of land is designed, arranged, intended, maintained or occupied or any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.
- (bb) "Valuation" shall be determined by the Director and means the estimated cost to replace the structure, in kind, based on current replacement costs, or in the case of other developments, as defined in 9-4(i)(1), the fair market value of the development.
- (cc) "Vegetation Growth" means any plant, tree, shrub, grass, or groups, clusters or patches of the same, naturally rooted and growing.

9-5 Special Management Area

Special Management Area of the County shall be as delineated on such maps filed with the Authority as of June 8, 1977, or as may be amended pursuant to Section 9-21, and shall be the official Special Management Area to be administered and enforced under this rule.

9-6 Objectives and Policies of Chapter 205A, HRS

- (a) The objectives and policies of the coastal zone management program shall be those set forth in Section 205A-2, HRS, as amended.
- (b) The Commission shall implement these objectives and policies, as appropriate.

9-7 Special Management Area Guidelines

The Special Management Area guidelines set forth in Section 205A-26, HRS, as amended, shall be used by the Commission, as appropriate, for the review of developments proposed in the Special Management Area.

9-8 Permits Required for Development

- (a) No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.
- (b) No State or County Agency authorized to issue permits within the Special Management Area shall authorize any development unless approval is first received in accordance with this rule.
- (c) Special Management Area Minor, Use or Emergency Permits or exemptions validly issued by the Department or the Commission, subsequent to any amendment to Chapter 205A, HRS but preceding any supportive amendment to this rule shall continue to be considered valid.

9-9 Authority of the Department in the Special Management Area

All development within the Special Management Area shall be administered through the Department under this rule pursuant to the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS.

To improve the efficiency of the Commission's review, approval and permitting processes granted upon it by Chapter 205A-22, HRS and in accordance with Rule 9 herein, the Commission hereby delegates to the Director the authority to process assessments, determinations and conditions regarding exemptions, issue and enforce Special Management Area Minor Permits and Special Management Area

Emergency Permits, and to administer, interpret, and enforce terms, scope and conditions set forth in Special Management Area Use Permits issued by the Commission.

9-10 Assessment

- (a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed use, activity or operation will: a) exceed \$500,000 in valuation; or b) have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedures may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.
  
- (b) For proposed uses, activities or operations that are subject to an assessment, the applicant shall submit to the Department a Special Management Area Assessment (SMAA) on a form prepared by the Department. The review and acceptance of the assessment application shall follow the procedures pursuant to Section 25-2-3 (Review and acceptance of applications) in Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). The information on the SMAA form shall include, but not be limited to, the following:
  - (1) The tax map number for the property.
  - (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon and any other information necessary to a proper determination relative to the specific request.
  - (3) A written description of the proposed project and a statement of objectives.
  - (4) An Environmental Assessment (EA) or Environmental Impact Statement (EIS) if required under Chapter 343, HRS, or when required by the Director.
  - (5) A written description of the anticipated impacts of the proposed uses, activities or operations on the Special Management Area including but not limited to:
    - (A) Description of environmental setting;
    - (B) The relationship of the proposed action to land use plans, policies, and control of the affected area;

- (C) The probable impact of the proposed action on the environment;
  - (D) Any probable adverse environmental effects which cannot be avoided;
  - (E) Alternatives to the proposed action;
  - (F) Mitigating measures proposed to minimize impact; and
  - (G) Any irreversible and irretrievable commitment of resources.
- (6) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
- (A) The identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area;
  - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
  - (C) The feasible action, if any, to be taken to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (7) A written statement discussing the proposed use, activity or operation in relation to the objectives and policies as provided by Chapter 205A, HRS.
- (8) A statement of the valuation of the proposed use, activity or operation.
- (9) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline.
- (10) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used.

- (11) Any other plans or information required by the Director. An EIS that has been declared adequate under the National Environmental Policy Act (NEPA) or under Chapter 343, HRS, may constitute a valid filing under this section.
- (12) A fifty dollar (\$50) filing fee.
- (c) The Director shall assess the proposed use, activity or operation upon the applicant's compliance with Section 9-10B based on the following criteria:
  - (1) The valuation of the proposed use, activity or operation.
  - (2) The potential effects and significance of each specific circumstance of the use, activity or operation, according to the criteria of significant adverse effect established by Section 9-10H.
- (d) The Director, within sixty calendar days after the receipt of all filing requirements or within a longer period as may be agreed to by the applicant, shall notify the applicant in writing that:

The proposed use, activity or operation does not constitute a development or is exempt from the definition of development; or

A Special Management Area Minor Permit is being issued; or

A Special Management Area (Major) Use Permit is required.

If the proposed use, activity, or operation is less than \$500,000 in value and the Director fails to act within the sixty calendar day period or within such longer period as may have been agreed to by the applicant, the proposed use, activity or operation shall be forwarded to the Commission for its consideration. The notice and hearing procedures and action shall be the same as under Section 9-11(c) through 9-11(f).

- (e) Where it is found that the proposed use, activity or operation is not in excess of \$500,000 in valuation; and will not have a cumulative impact, or a significant adverse effect on the Special Management Area, and after review by the Public Works Director for compliance with Chapter 27, Flood Control, of the Hawai'i County Code, the Director shall issue a Special Management Area Minor Permit.
  - (1) The issuance of such minor permit shall be subject to any reasonable terms or conditions.
  - (2) A copy of the Special Management Area Minor Permit issued shall be filed with the Commission and the Office of Planning of the State

Department of Business, Economic Development and Tourism.

- (f) The Director shall declare that a Special Management Area Use Permit is required if it is found that the proposed use, activity or operation has a valuation in excess of \$500,000 or may have a significant adverse effect on the Special Management Area. Should a determination be made that the proposed use, activity or operation requires a Special Management Area Use Permit, the applicant shall submit such application in accordance with Section 9-11.
- (g) The Director shall declare the proposed use, activity or operation exempt from the definition of development if it is found that the proposal falls in any category under Section 9-4(h)(2), and does not have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a significant adverse effect on the Special Management Area.
- (h) Criteria of Significant Adverse Effect

In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action.

A 'significant adverse effect' is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a significant adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as the short or long-term effect of the proposal. The Director should bear in mind that in most instances, the following factors of a proposal, although not limited to same, may constitute a significant adverse effect on the environment when the proposed use, activity or operation:

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans;
- (2) curtails the range of beneficial uses of the environment;
- (3) conflicts with the long-term environmental policies or goals of the General Plan or the State Plan;



- (4) significantly affects the economic or social welfare and activities of the community, County or State;
- (5) involves significant secondary impacts, such as population changes and effects on public facilities;
- (6) in itself has no significant adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;
- (7) significantly affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (8) detrimentally affects air or water quality or ambient noise levels;
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water; or
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

(i) SMA Short Form Assessment

The Department may create a SMA short form assessment to be used by the Department to assess uses that may result in a determination that the proposed use is exempt, i.e., single family residence, minor grubbing, or accessory structures. The short form assessment may include, but not be limited to the following information:

- (1) The tax map number for the property;
- (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon;
- (3) Description of the proposed action, including the extent of land clearing, if any;
- (4) Description of any known historical sites, anchialine ponds, wetland, or sandy beach, and any other pertinent information.

In case of a single family dwelling, a Building Permit application may suffice as the plot plan required under (2).

The Director may require a full SMAA if it is determined through the short

form assessment review that further information is needed from the applicant. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a significant adverse effect on the SMA.

9-11 Special Management Area Use Permit Procedures

(a) Compliance with Chapter 343, HRS

If the action proposed requires compliance with Chapter 343, HRS, an environmental assessment or environmental impact statement shall accompany the filing of a special management area use permit application. The Department, on behalf of the Commission, shall be the accepting authority of all environmental assessments and/or environmental impact statements, if appropriate, which are prepared in accordance with Chapter 343, HRS and this rule. A special management area use permit application shall not be considered complete until such time as the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawai'i Administrative Rules, if applicable, have been complied with.

(b) Application

An applicant who has received a determination that the proposed use, activity or operation does not conform to the requirements for a minor permit, or who has determined on its own that the proposed use, activity or operation will exceed \$500,000 in valuation or will have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, shall apply to the Authority through the Director for a Special Management Area Use Permit.

The applicant shall submit the following to the Director:

- (1) The completed application including the following:
  - (A) A tax map key description of the property;
  - (B) A plot plan of the property, drawn to scale, with all existing and proposed structures shown thereon and any other information necessary to make a proper determination of the impacts relative to the specific request;
  - (C) A written description of the proposed project and statement of the objectives;
  - (D) An EA or EIS if required under Chapter 343, HRS, or when required by the Director;

- (E) A written description of the anticipated impacts of the proposed development on the Special Management Area, including but not limited to:
- (i) Description of environmental setting;
  - (ii) The relationship of the proposed action to land use plans, policies, and control of the affected area;
  - (iii) The probable impact of the proposed action on the environment;
  - (iv) Any probable adverse environmental effects which cannot be avoided;
  - (v) Alternatives to the proposed action;
  - (vi) Mitigating measures proposed to minimize impact; and
  - (vii) Any irreversible and irretrievable commitment of resources.
- (F) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
- (i) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
  - (ii) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
  - (iii) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (G) A written statement discussing the proposed development in relationship to the objectives and policies as provided by

Chapter 205A, HRS;

- (H) A statement of the valuation of the proposed use, activity or operation;
  - (I) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline;
  - (J) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used; and
  - (K) Any other plans or information required by the Director.
- (2) In the case of an applicant whose proposed development has been assessed, any information as to the areas of critical concern delineated by the Director.
  - (3) In the case where a multi-unit residential structure, containing more than ten units is proposed, the Director may require the applicant to submit a scale model or three-dimensional rendering of the proposed development and related improvements.
  - (4) Archaeological Resources (one of the following):
    - (A) An archaeological inventory report or assessment prepared by a licensed archaeologist containing significance assessments, effect determinations, and proposed mitigation commitments. The report should be completed pursuant to Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD) rules.
    - (B) A prior “no-effect” letter from the DLNR-SHPD for the subject property.
    - (C) A letter and location map for the Planning Department to submit to DLNR-SHPD claiming no significant historic sites are likely to be present. The letter must present supportive evidence documenting the proposed land altering activities (including the affected area and depth of disturbance) and documenting the likely nature and depth of historic properties that may have once existed in the area.

- (5) Five hundred (\$500) dollars filing fee to cover publication and other administration costs.
- (6) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.

(c) Posting of Signs for Public Notification

- (1) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
  - (A) The nature of the application;
  - (B) The proposed use of the property;
  - (C) The size of the property;
  - (D) The tax map key(s) of the property;
  - (E) That the public may contact the Department for additional information; and
  - (F) The address and telephone number of the Department.
- (2) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (3) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
- (4) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been

posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

(d) Hearings

Upon acceptance of an SMA Use Permit application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of an SMA Use Permit application by the Director, or within a longer time period as agreed to by the applicant.

Promptly after the Commission fixing a date for the hearing, the applicant shall mail a notice of the hearing setting forth the time, date, and place of the hearing to the owners of properties, lessees, and others with a recorded possessory interest in property within three hundred feet of the perimeter boundary of the affected property and to any other person or agency that has made a written request to the Department for advance notice of the hearing, not less than twenty calendar days prior to the date set for the hearing. Prior to the date of the hearing, the applicant shall file with the Commission, through the Director, an affidavit or other similar proof of mailing of said notice. In addition to said notice and at least twenty calendar days prior to the date of the hearing, the Commission shall give public notice of the time, date, and place of the hearing at least once in the County. Any failure to mail or to receive the public notice shall not invalidate the proceedings, provided further that the proceedings conform to the requirements of Chapter 91, HRS, as amended. These aforementioned notice requirements are not required for subsequent hearing dates upon the same application.

At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and Commission Rule 4 relating to Contested Case Procedures, where applicable.

Any such hearing shall, whenever possible, be held jointly and concurrently with other applicable hearings for the proposed development.

The applicant shall submit an additional two hundred fifty (\$250) dollars processing fee for each hearing continued at the request of the applicant. The applicant shall also notify all owners of properties, lessees, and other recorded possessory interests in the property within three hundred feet of the perimeter boundary of the affected property of the continued hearing.

(e) Grounds for Approval of Special Management Area Use Permits:

The Commission may permit the proposed development only upon finding that:

- (1) The development will not have any significant adverse environmental or ecological effect except as any adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest. Those adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each of which taken by itself might not have a significant adverse effect, and the elimination of planning options;
- (2) The development is consistent with the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS;
- (3) The development is consistent with the general plan, community plan, zoning code and other applicable ordinances, provided that a finding of consistency shall not preclude concurrent processing where a general plan, community plan, or zoning amendment may also be required.
- (4) The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
  - (A) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
  - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
  - (C) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.

Any development permitted shall be subject to reasonable terms and conditions set by the Authority in accordance with the Special Management Area guidelines as contained in Section 9-7.

- (f) Decision and Order

- (1) Within sixty days following the close of the public hearing(s), or a longer time period as agreed to by the applicant, the commission shall either deny or approve the application. The decision, whether to grant or to deny the application, shall require a majority vote of the total membership of the Commission. In the event the Commission fails to render a decision to approve or deny within the prescribed time limit, the request shall be considered denied.

The applicant may request the Commission to defer action on the application. A majority vote of the total membership of the Commission is required if applicant requests to defer action on the application. In the event the Commission fails to render a decision to defer action within the prescribed time limit, the request shall be considered denied.

- (2) Notice of Decision: Notice of the decision shall be promptly given to the applicant by delivery thereof or by mailing or electronically mailing the notice to the applicant's last known address.
- (3) Reconsideration: In the event an application is denied due to the Commission's failure to render a decision within the period prescribed by Section 9-11(f)(1) above, the applicant may, within ten calendar days after receipt of notice of the denial, request reconsideration of that decision. Upon such request, the Department shall place the application on the agenda of Commission for its reconsideration at the next meeting. In the event the Commission fails to render a decision by a majority vote of its total membership at the next meeting, the application shall be considered as denied.
- (4) Refiling: Whenever an application for a Special Management Area Use Permit has been denied, no new application for the same or similar development, covering all or any portion of the property involved in the application, shall be accepted by the Commission through the Director for a period of two years from the effective date of the denial of the application; provided, however, that upon showing of a substantial change of circumstances the Commission may permit the filing of a new application prior to the expiration of such a two-year period.
- (5) Appeals:
  - (A) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person desiring to appeal is



notified of the decision or order, or of the action taken in a manner provided by statute.

- (B) If a contested case hearing is held, a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

(g) Amendments to a Special Management Area Use Permit or Conditions

- (1) Application: The applicant may apply to the Commission through the Director for an amendment to the permit or condition(s) imposed by the Special Management Area Use Permit.

In the case of time extensions, the applicant shall set forth in writing: (a) the length of time requested; and (b) the reasons for the time extension.

In the case of additions, modifications, and/or deletions of conditions, the applicant shall file the request not less than sixty days prior to the expiration date of the time conditions, setting forth: (a) the condition to be amended; and (b) the reasons thereof.

The applicant shall also deposit with the Department the sum of two hundred fifty (\$250) dollars to cover publication and other administrative costs, along with the request.

- (2) Notice and Hearing: The hearing and notice procedures shall be the same as under Section 9-11(c) and (d).
- (3) Decision and Order: The procedures shall be the same as provided for under Section 9-11(f).

9-12 Artificial Light on Shoreline and Ocean Waters

- (a) Artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purposes is prohibited when the light (1) directly illuminates the shoreline and ocean waters; or (2) is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-12(a) shall not apply to:
  - (1) A outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo, provided that (A) the outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or (B) the outdoor lighting fixture is the only practicable

means of ensuring the safety and security of guests, visitors, and employees; and

- (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

#### 9-13 Prohibitions

- (a) No special management area use permit or special management area minor permit shall be granted for structures that allow artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purpose when the light:
  - (1) Directly illuminates the shoreline and ocean waters; or
  - (2) Is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-13(a) shall not apply to special management area use permits for structures with:
  - (1) An outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo; provided that
    - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
    - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
  - (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

#### 9-14 Special Management Area Emergency Permits

- (a) A Special Management Area Emergency Permit may be issued for emergency repairs to existing public utilities including but not limited to water, sewer, gas and electric transmission lines and highways, or similar emergencies which may otherwise not be exempt from the Special

Management Area permit requirements. Upon finding that an emergency exists and requires immediate action, the Director shall issue a Special Management Area Emergency Permit subject to reasonable terms and conditions including an expiration date. Such permits shall be filed with the Commission in writing.

- (b) In cases of imminent substantial harm to public health, safety, or welfare in the County, including declared states of emergency by the Governor, the Mayor may waive the requirements of obtaining a permit pursuant to these Rules and Regulations.

#### 9-15 Exemptions

This rule shall not apply to proposed developments within the Special Management Area for which final approval, or in the case of subdivisions, for which preliminary subdivision approval, was issued prior to the adoption of this rule, amendments thereto, or to the adoption of the Special Management Area Maps. SMA Use Permit applications filed prior to the adoption of amendments to this rule shall be exempted from any new procedures.

#### 9-16 Revocation

- (a) A Special Management Area Use Permit may be revoked by the Commission in the event that:
  - (1) Any property owner who holds the permit sought to be revoked or at the request of any other person, with the property owner's consent, submits a written statement to the Commission verifying that the development approved under the permit issued has either not been established or has been abandoned.
  - (2) The Director submits a request if:
    - (A) There has been noncompliance with the conditions of the permit; or
    - (B) The development authorized under the permit is creating a threat to the health or safety of the community.
- (b) Notice and Hearing: The Director shall provide written notice to the property owner and/or to the person who has been issued the permit prior to the Commission taking action to revoke the permit. The Commission shall conduct a hearing within a period of ninety calendar days from the receipt of the request by the applicant or Director. At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and

Commission Rule 4 relating to Contested Case Procedures, where applicable.

- (c) Decision and Order: The procedures shall be the same as provided under Section 9-11(f) of this rule.
- (d) A property owner or other person affected by the revocation of a Special Management Area Use Permit ordered by the Commission, may, within thirty days after the date of the Commission's written order, appeal the Commission's action to the Third Circuit Court as provided by Chapter 91 of the HRS. An appeal to the Third Circuit Court shall stay the provisions of the Commission's revocation order pending the final decision of the Third Circuit Court.
- (e) The Department is authorized to adopt rules to establish procedures for revocation of a Special Management Area Minor Permit.

#### 9-17 Penalties

- (a) Any person who violates any provision of this rule shall be liable for (1) a civil fine not to exceed \$100,000; or (2) for the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation.
- (b) In addition to any other penalties, any person who is violating any provision of this rule shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.
- (c) Any civil fine or other penalty provided under this rule may be imposed by the circuit court or by the Department after an opportunity for a hearing under Chapter 91, HRS.

#### 9-18 Complaint and Investigative Procedures

The Department shall adopt rules to establish procedures for investigating complaints and alleged violations.

#### 9-19 Administrative Fines

The Department is authorized to impose administrative fines in accordance with established rules.

#### 9-20 Injunction

Any person violating any provision of this rule may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to

effectuate the purposes of this rule in a suit brought by the County.

9-21 Hearing Officer

- (a) The Commission may authorize a hearing officer to conduct a hearing for the purpose of taking testimony and to report his/her findings of facts and conclusions of law with his/her recommendation to the Authority on proceedings under the jurisdiction of the Commission as provided by this rule.
- (b) The notice and hearing requirements for hearings conducted by a hearing officer shall be same as provided under Sections 9-11(c), 9-11(d), 9-22(b), 9-23(a)(2) or 9-23(b)(2), as may be applicable.
- (c) Post hearing procedures for hearings conducted by a hearing officer:
  - (1) Recommendation of hearing officer: Upon completion of taking of the evidence the hearing officer shall prepare a report setting forth findings of fact, conclusions of law, and the reasons therefor, and a recommended order and submit the report of the case to the Commission.
  - (2) Contents of the record: The record shall include the petition, transcripts of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the persons involved, objections to conduct of the hearing and the report of the hearing officer and all other matters placed into evidence.
  - (3) Within forty-five calendar days after the conclusion of the hearing, the hearing officer shall complete the report and submit it to the Commission and to all persons involved in the proceedings.
- (d) Exceptions to the Hearing Officer's Report and Recommendation:
  - (1) Within ten working days after receipt of the report and recommendation by the hearing officer, a person involved in the proceedings may submit to the Authority his exceptions to the report and his reasons in support thereof.
  - (2) The exception shall:
    - (A) Set forth specifically the procedure, fact, law or policy to which exceptions are taken;
    - (B) Identify the part of the hearing officer's report and recommended order to which objections are made; and

(C) State specifically the reasons for exceptions to the ruling, finding, conclusion, or recommendation.

(e) Testimony Before the Commission:

- (1) If a person involved in the proceedings desires to testify before the Authority, a written request with reasons therefor shall accompany the exceptions and the Commission may grant such request.
- (2) The Commission may on its own motion re-open the hearing to allow the taking of additional testimony and further evidence.

(f) Commission Action:

- (1) In the event no statement of exception is filed, the Commission may proceed to reverse, modify or adopt the recommendation of the hearing officer.
- (2) Upon the submittal of exceptions and the taking of further evidence, if any, Commission shall render its decision pursuant to Rule 9-11(e).

9-22 Petition for the Adoption, Amendment or Repeal of Rule 9 Special Management Area Rule of the County of Hawai'i

(a) Petition

Any person may petition the Commission through the Director requesting the adoption, amendment or repeal of any provision of this rule.

The petitioner shall be responsible for submitting the following to the Director:

- (1) The completed petition including:
  - (A) A statement of the nature of the petitioner's interest.
  - (B) A draft of the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.
  - (C) An explicit statement of the reasons in support of the proposed rule, amendment or repeal. Said reasons shall include a discussion of the relationship of the proposed change with Chapter 205A, HRS, Relating to Coastal Zone Management, and other applicable State and County

Ordinances or regulations including the General Plan.

- (2) Five hundred (\$500) dollars filing fee to cover publication and other administrative costs.

- (b) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) and (d), provided further that the Commission shall conduct a public hearing within a period of ninety calendar days from the receipt of a properly filed petition.

- (c) Decision and Order

The procedures shall be the same as under Section 9-11(f).

9-23 Amendment of Special Management Area (SMA) Maps

- (a) Amendments initiated by the Director:

- (1) Initiation:

- (A) The Director may at any time initiate amendments to the Special Management Area Boundaries.
    - (B) The Commission, by a two-thirds (2/3) vote of its total membership, may direct the Director to initiate amendments to the Special Management Area boundaries.
    - (C) The Director shall give notice of his intent to amend the Special Management Area boundaries to the Commission, the general public and the State Office of Planning, stating the initiation date and estimated completion date of review. The Director, upon completion of his review, shall submit the proposed amendments to the Commission.

- (2) Notice and Hearing:

The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) of this rule, provided further that the Commission shall conduct a hearing within a period of sixty calendar days from the submittal of the proposed amendments by the Director.

- (3) Grounds for Approval of Special Management Area Boundary Amendments:

The Commission may amend the Special Management Area boundaries only upon finding that the amendments will further the objectives and policies as provided by Chapter 205A, HRS, and will be consistent with the General Plan and other applicable ordinances.

(4) Decision and Order:

The procedures shall be the same as under Section 9-11(f).

(b) Special Management Area Boundary Amendments Initiated by the General Public:

(1) Application:

Any person may apply to the Commission through the Director requesting the amendment of the Special Management Area boundaries.

The applicant shall submit the following to the Department:

(A) The completed application including the following:

- (i) A statement of the nature of the applicant's interest.
- (ii) A description of the properties involved in sufficient detail to determine the precise location.
- (iii) An explicit statement of the reasons in support of the request including a discussion of how the amendment will further the Special Management Area objectives and policies as well as be consistent with the General Plan and other applicable ordinances.
- (iv) A statement discussing the proposed use of the parcel and any other information necessary to render a proper decision relating to the specific request.

(B) Five hundred (\$500) dollars filing fee to cover publication and other administrative costs.

(2) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) and (d).



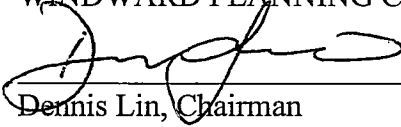
- (3) Grounds for Approval of Special Management Area Boundary Amendments:

The Grounds for approval of Special Management Area boundary amendments shall be the same as provided for in Section 9-23(a)(3).

- (4) Decision and Order:

The procedures shall be the same as provided for in Section 9-11(f).

WINDWARD PLANNING COMMISSION

  
Dennis Lin, Chairman

6/16/2023  
Date

LEEWARD PLANNING COMMISSION

  
Barbara DeFranco, Chairman

6-15-2023  
Date

Notice of Public Hearing:

Hawai'i Tribune Herald: March 21, 2023  
West Hawai'i Today: March 21, 2023

Date and Place of Joint Planning Commission Hearing: April 20, 2023

West Hawai'i Civic Center, Council Chambers, Building A  
75-5044 Ane Keohokālole Highway, Kailua-Kona, Hawai'i  
Interactive Conference Technology (ICT) Remotely


Notice of Public Hearing:

Hawai'i Tribune Herald: May 3, 2023  
West Hawai'i Today: May 3, 2023

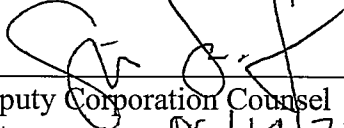
Date and Place of Joint Planning Commission Hearing: June 2, 2023

Hawai'i County Council Chambers in Hilo  
25 Aupuni Street, Hilo, Hawai'i  
Interactive-Conference Technology (ICT) Remotely

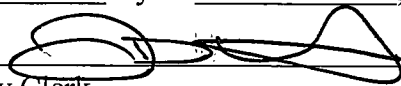
APPROVED:

  
MAYOR, County of Hawai'i  
Date: 06/21/2023

APPROVED AS TO FORM:

  
Deputy Corporation Counsel  
Date: 06/19/23

I hereby certify that the foregoing amendments and revisions to the Hawai'i County Planning Commission Rules of Practice and Procedure was received and filed in my Office this 22nd day of June, 2023.

  
County Clerk

**MC-12, Chapter 203, Shoreline Rules**

- § 12-203-4 Definitions
- § 12-203-6 Establishment of shoreline setback lines
- § 12-203-7 Request for an amendment to a shoreline setback line
- § 12-203-8 Determination of the shoreline
- § 12-203-9 Development plans
- § 12-203-11 Prohibited activities within the shoreline area
- § 12-203-12 Allowable structures and activities within the shoreline area
- § 12-203-12.1 Abandoned structures or structures imminently threatened by erosion
- § 12-203-13 Request for approval of structures and activities in the shoreline area
- § 12-203-14 Variance application
- § 12-203-15 Criteria for approval of a variance
- § 12-203-16 Enforcement
- § 12-203-18 Appeal of director's decision; filing the notice of appeal

DEPARTMENT OF PLANNING

COUNTY OF MAUI

Amendments to Title MC-12, Chapter 203  
Shoreline Rules for  
the Maui Planning Commission

SUMMARY

1. §12-203-2 is amended.
2. §12-203-3 is amended.
3. §12-203-4 is amended.
4. §12-203-6 is amended.
5. §12-203-7 is amended.
6. §12-203-8 is amended.
7. §12-203-9 is amended.
8. §12-203-10 is amended.
9. §12-203-11 is amended.
10. §12-203-12 is amended.
11. §12-203-12.5 is added.
12. §12-203-13 is amended.
13. §12-203-14 is amended.
14. §12-203-15 is amended.
15. §12-203-16 is amended.
16. §12-203-18 is amended.

17. §12-203-23 is amended.

## “Subchapter 1      General Provisions

12-203-1	Title
12-203-2	Purpose
12-203-3	Applicability
12-203-4	Definitions
12-203-5	Severability

## Subchapter 2      Shoreline Setback Lines; Shoreline Area

12-203-6	Establishment of shoreline setback lines
12-203-7	Request for [a shoreline setback determination or an annual erosion hazard rate amendment] <u>an amendment to a shoreline setback line established by the erosion hazard line</u>
12-203-8	Determination of the shoreline
12-203-9	Site plans
12-203-10	Structures and activities subject to these rules
12-203-11	Prohibited activities within the shoreline area
12-203-12	[Permitted] <u>Allowable</u> structures and activities within the shoreline [setback] area.
12-203-12.5	<u>Abandoned structures or structures imminently threatened by erosion.</u>
12-203-13	Request for [a determination] approval of structures and activities in the shoreline[setback] area

## Subchapter 3      Variances

12-203-14	Variance application
12-203-15	Criteria for approval of a variance

## Subchapter 4      Enforcement; Penalties

12-203-16	Enforcement
12-203-17	Penalties

## Subchapter 5      Appeals

12-203-18	Appeal of director's decision; filing the notice of appeal
12-203-19	Content of the notice of appeal
12-203-20	Joint or consolidated appeals
12-203-21	Service of the notice of appeal
12-203-22	Payment of fees
12-203-23	Contested case hearing on appeal
12-203-24	Disposition of appeal

Amendments to Title MC-12, Chapter 203  
Shoreline Rules for  
the Maui Planning Commission

1. Section 12-203-2 is amended to read as follows:

“§12-203-2 Purpose. (a) The purpose of this chapter is to establish shoreline rules that regulate the use and activities of land within the shoreline environment in order to protect the safety and welfare of the public by providing protection from coastal natural hazards; and to ensure that the public use and enjoyment of our coastal resources are preserved and protected for future generations in accordance with the Hawaii coastal zone management law, Hawaii Revised Statutes chapter 205A.

(b) One of the most important and significant natural resources of the County of Maui is its shoreline environment. Due to competing demands for utilization and preservation of the beach and ocean resources, it is imperative:

- (1) That use and enjoyment of the shoreline area be ensured for the public to the fullest extent possible;
- (2) That the natural shoreline environment be preserved;
- (3) That [man-made] constructed features in the shoreline area be limited to features compatible with the shoreline area;
- (4) That the natural movement of the shoreline be protected from development;
- (5) That the quality of scenic and open space resources be protected, preserved, and where desirable, restored; and
- (6) That adequate public access to and along the shoreline be provided.

These steps are necessary because development and other [man-made] constructed improvements have resulted in encroachment of structures near the shoreline and, in numerous instances, erosion and other disturbances affecting the natural movement of the shoreline. Moreover, these steps are also necessary because the Hawaiian Islands are subject to coastal natural hazards such as tsunamis, high wave action, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose hazards to residences and other structures near the shoreline. [These hazards may also necessitate the need to harden the shoreline to protect structures which may have an adverse impact on the environment. Further, continual replacement of structures damaged or destroyed by ocean conditions may cause an economic hardship to other flood insurance policy holders by the increase in premiums. Consequently, the purpose of this chapter is to establish shoreline rules which regulate the use and activities of land within the shoreline environment in order to protect the health, safety, and welfare of the public by providing minimum protection from known coastal natural hazards; and to ensure that the public use and enjoyment of our shoreline resources are preserved and protected for future generations in accordance with

the Hawaii coastal zone management law, HRS chapter 205A.] Shoreline hardening has historically been the response to impacts from coastal hazards such as shoreline erosion, and this approach is now widely recognized in most cases to have an adverse impact on neighboring properties and the beach system. To prioritize coastal resilience, and to preserve and restore coastal and cultural resources, preferred alternatives include options for nature-based protection, and to avoid, accommodate, or shift away from coastal hazards." [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)

2. Section 12-203-3 is amended to read as follows:

"§12-203-3 Applicability. These rules shall be applicable to all lands located within the shoreline area of the Island of Maui, County of Maui, State of Hawaii. The director shall administer this chapter." [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)

3. Section 12-203-4 is amended to read as follows:

"§12-203-4 Definitions. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future detrimental effect on beach processes as a result of a structure or activity located within the shoreline [setback] area, or to pose the need to artificially fix the shoreline.

["Annual erosion hazard rate" means the annual rate of coastal erosion calculated according to the methodology developed by the university of Hawaii along transects placed at regular intervals of approximately sixty-six feet and as indicated on maps on file with the department. Said rates shall be updated on a regular basis at least once every ten years, provided funding is budgeted for the purpose; or pursuant to an annual erosion hazard rate amendment approved in accordance with section 12-203-7. Land area outside of the boundary of these maps shall have no annual erosion hazard rate. Where the shoreline is fixed by:

- (1) Artificial structures that are nonconforming or that have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure, or
- (2) Exposed natural stabilized geographic features such as cliffs and rock formations, the annual erosion hazard rate shall cease at the interface.]

"Artificially fix the shoreline" means to permanently establish the



shoreline.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three.

"Beach nourishment" means the technique of placing sand or cobble fill consistent with existing beach conditions along the shoreline to widen the beach and provide a buffer against coastal erosion and wave attack.

"Best Management Practices" or "BMPs" means a set of mitigation actions that are intended to protect the environment from harm and to ensure that water quality and marine resources are protected during all phases of a project or activity.

"Board approval" means approval of the board of land and natural resources pursuant to HRS section 183-C, as amended.

"Calamity" means any episodic non-chronic event producing sudden and severe damage or risk of imminent severe damage or threat to public health or safety within the reasonably foreseeable future.

"Certified shoreline survey" means the actual field location of the shoreline prepared by a land surveyor registered in the State of Hawaii that is signed, dated, and certified by the chairperson of the board of land and natural resources.

"Coastal dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand continuous and immediately landward of the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters as defined by chapter 20.08, Maui County Code.

"Coastal erosion" means the wearing away of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline (vegetation line) retreat.

["Coastal erosion hazard zone" shall include all of the land area between the shoreline and a line as established by measuring twenty-feet plus a distance of fifty times the annual erosion hazard rate from the shoreline.]

"Coastal hazards" means [hazards created by and limited to coastal processes which are generated from waves or tides.] any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution, as defined by HRS 205A-1.

"Commission" means the Maui planning commission.

"Department" means the department of planning of the County of Maui.

"Development plan" means a detailed drawing to scale that shows the proposed activity or structure and all areas where work will be performed. The plan shall include:

- (1) Property boundaries;
- (2) All existing natural and constructed features and conditions that occur within the proposed area of work; and

(3) All proposed modifications to existing features, such as excavation or other ground-altering activity (length, width, and depth), and proposed new features and conditions.

The director may require that the plan include an accurate instrument survey of the lot as well as cross sections of the lot at designated locations to be prepared by a surveyor licensed in the State of Hawaii.

"Director" means director of the department of planning.

"Dune restoration" means the technique of rebuilding an eroded or degraded dune through one or more various methods, such as [sand fill, drift fencing, or revegetation], etc.]].

"Erosion hazard line" (EHL) means the mapped, 80 percent, cumulative probability contour of the coastal erosion hazard zone with 3.2 feet of sea level rise on the date these rules were adopted. The EHL must reflect the best available science as published in peer reviewed literature such as the Hawaii Climate Change Mitigation and Adaptation Commission's 2017 Hawaii Sea Level Rise Vulnerability and Adaptation Report, as accessible within the Hawaii Sea Level Rise Viewer hosted by the Pacific Islands Ocean Observing System. The EHL and resulting setback mapped by the Department may need to be updated to reflect future updates and reports based on best available science, with such updates being subject to adoption by the commission.

"Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.

"Ground altering" or "ground disturbance" means grading, trenching, digging, grubbing, excavating or otherwise moving soil or other natural material that comprises the surface and subsurface of a parcel of land to the extent that such activity could potentially impact cultural or natural resources as determined by the director.

"HRS" means the Hawaii Revised Statutes, as amended.

"Lot" means a designated parcel, tract, or area of land established by subdivision or as otherwise established prior to the adoption of subdivision laws.

"Irregularly shaped lot" means a flag lot, triangular parcel, lot bordered by ocean on two or more sides, headland, or peninsula.

"Makai" means seaward.

"Mauka" means inland.

"Minimum buildable depth" means the minimum depth that a structure may be constructed taken from a line running makai of and parallel to the front yard or most landward setback, not to exceed [thirty-five] forty feet in length.

"Minor activity" means an activity that does not adversely impact the existing grade of the setback area and shall be limited to activities related to landscaping, minor clearing (grubbing) of vegetation, soil testing, archaeological trenching, and minor grading which is not subject to HRS chapter 343, provided that best management practices are employed.

"Minor structure" means a [man-made] structure that costs less than

[\$125,000,] \$250,000, does not impede the natural movement of the shoreline, and does not significantly alter the existing grade of the shoreline [setback] area, [and may include but not be limited to:] including the following:

- (1) landscape features[(i.e.,) such as barbecues, lighting, benches, chairs, borders, wooden trellis, fences, railings, bird feeders, signs, and safety improvements[, etc.]);
- (2) [movable/portable] movable or portable lifeguard stands; [portable or movable walkways for public access;]
- (3) landscaping and drywells;
- (4) irrigation systems, provided they are directed away from and do not result in impermissible encumbrances to the shoreline;
- (5) outdoor shower and water faucets; [utility poles and accessory structures along existing corridors;] and
- (6) temporary tents for special events conducted by commercial or non-profit entities not exceeding fourteen consecutive days in duration during any three-month period[.];
- (7) portable or movable walkways for public access, such as wooden or composite boardwalks or dune walkovers or structures providing access that primarily benefit the public, as determined by the director.

A minor structure shall not include a pool, spa, gazebo, [car port,] carport, garage, or [similarly-massed structures] a similarly massed structure of a permanent nature.

“Nonconforming structure/activity, lawful” means a structure or activity [which was lawfully existing] within the shoreline area and [which:

(1) Was] either was completely built or initiated prior to June 22, 1970[;]  
or

[(2) Received either a building permit, board approval, or shoreline area variance prior to June 16, 1989; or

(3) Was outside the shoreline area when it received either a building permit or board approval.] received all applicable and required permits and approvals for all structures and activities prior to the effective date of these rules.

“Nonstructural improvement” or “nonstructural” is or describes any improvement, maintenance, repair or renovation which does not materially alter the load-bearing components essential to the stability of the overall structure. Nonstructural improvements may include, but are not limited to, window or door replacement or additions, reroofing, storage sheds, fencing, signage, low impact development parking lot improvements, addition of solar panels that do not significantly alter building height or previously developed land area, or other activities that do not affect the integrity of a structure as defined in HRS 205A-22.

["Overlay” means the more mauka (landward) Segments of each line, in circumstances where the methods of calculating the shoreline setback line result in two lines that intersect with each other.]

["Plan" means a detailed construction plan drawn to scale that shows the

design of a structure proposed to be built within the shoreline area. The plan shall consist of data which include, but which are not be limited to:

- (1) Property boundaries;
- (2) Natural features such as large trees, rock outcroppings;
- (3) Topography in and around the proposed construction; and
- (4) Any other information which identifies the existing condition of the subject parcel of land.

The director may require that the plan include an accurate instrument survey of the lot as well as cross sections of the lot at designated locations to be prepared by a surveyor licensed in the State of Hawaii.]

“Qualified demolition” means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with:
  - (A) [Section 12-203-2(5) that states that the quality of scenic and open space resources should be protected, preserved and, where desirable, restored;] The purpose of these rules; and
  - (B) Section 205A-2(c)(3)(C), HRS, which states that an objective and policy of the coastal zone management program is to preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
- (6) Will comply with:
  - (A) Chapter 19.62, Maui County Code, relating to flood hazard areas;
  - (B) Chapter 20.08, Maui County Code, relating to soil erosion and sedimentation control; and
  - (C) Chapter 6E, HRS, relating to historic preservation.

“Reconstruction” means rebuilding more than 75 percent of an entire structure as measured by the current valuation.

“Renovation” means the remodel, update, or upgrade of a structure that does not increase existing height or floor area and is not reconstruction.

“Repair” means the fixing or replacing of any part of an existing structure for the purpose of its maintenance, or renewal of surface treatments such as painting, carpeting, or exterior siding with substantially similar use of materials and location, but does not include expansion of use or intensity, reconstruction or renovation.

“Replacement Cost

“Restaurant dining area” means an outdoor seating area that includes movable tables and chairs, and may include movable umbrellas, for customers of a restaurant where food or beverages are served and consumed; this does not

include a bar, kitchen or other facility where food or beverages are prepared.

“Sand” means particles of mineralogic or rock material ranging in diameter from 0.0625 millimeters to 2 millimeters that shall be substantially clean of rubble and debris; shall contain no more than fifteen percent volume of silt which ranges in diameter from 0.039 millimeters to 0.0625 millimeters and clay which ranges in diameter from 0.00006 millimeters to .0039 millimeters; and shall not consist of artificially crushed coral as defined by chapter 20.08, Maui County Code. Additional specifications on quality, such as for dune or beach restoration purposes, may be required.

“Sea Level Rise Exposure Area” (SLR-XA) means the area of projected land loss (erosion) and flooding (high wave and passive) on the date these rules were adopted and as mapped by the department. The SLR-XA will reflect best available science as published in peer-reviewed literature such as the Hawaii Climate Change Mitigation and Adaptation Commission’s 2017 Hawaii Sea Level Rise Vulnerability and Adaptation Report, as accessible within the Hawaii Sea Level Rise Viewer hosted by the Pacific Islands Ocean Observing System. The SLR-XA may need to be updated to reflect future updates and reports based on best available science, with such updates being adopted by the Commission.

"Shoreline", as defined in HRS [205A,] section 205A-1 as amended, 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 [natural rather than artificially induced] vegetation growth, or the upper limit of debris left by the wash of the waves [which has been certified by the board of land and natural resources within the preceding twelve months].

"Shoreline area" as defined in HRS section 205A-41, as amended, means all of the land area between the shoreline and the shoreline setback line, and may include the area between mean sea level and the shoreline, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this part extends seaward of the shoreline, then "shoreline area" shall include the entire structure.

“Shoreline hardening” means structures that block or significantly inhibit landward movement of the shoreline and are used to protect structures or other features from erosion and other coastal hazards, to include seawalls, revetments, riprap, and bulkheads. Shoreline hardening does not include beach stabilizing structures, such as groins and breakwaters, designed by a professional engineer to stabilize a sandy beach along an eroding shoreline.

"Shoreline processes" means the natural flow of the ocean which affect the movement of the shoreline area or lands bordering the ocean, including submerged lands.

["Shoreline setback area" means “shoreline area” as defined in HRS chapter 205A, as amended, which includes all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not

received all permits and approvals required by law or if any part of any structure in violation of this part extends seaward of the shoreline, then the term "shoreline area" or "shoreline setback area" shall include the entire structure.]

"Shoreline setback line" means that line, as defined in HRS [chapter 205A] section 205A-41, as amended, running inland from and parallel to the shoreline at a horizontal plane.

"Structural improvement" means any improvement that materially alters load-bearing components essential to the stability of the structure.

"Structure" includes, as defined in HRS [chapter 205A] section 205A-41, as amended, [but is not limited to,] any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

"Valuation" means the cost of an activity, building, or structure as determined by real property valuation by the director of finance, an estimated valuation by an architect, engineer, or contractor licensed by the department of commerce and consumer affairs, State of Hawaii, or the director of public works. In the event of a conflict among the estimates, the higher estimate amount shall be used for the purposes of these rules."

§12-203-5 Severability. If any provision or part of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be inseverable. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-45, 205A-49; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-22, 205A-41)

4. Section 12-203-6 is amended to read as follows:

"§12-203-6 Establishment of shoreline setback lines. (a) All lots shall have a shoreline setback line that is [the greater of the distances from the shoreline as calculated under the methods listed below or the overlay of such distances:] specific to each lot and established as follows:

[ (i) Twenty-five feet plus a distance of fifty times the annual erosion hazard rate from the shoreline;

(ii) Based on the lot's depth as follows:

- (A) A lot with an average lot depth of one hundred feet or less shall have a shoreline setback line twenty-five feet from the shoreline;
- (B) A lot with an average lot depth of more than one hundred feet but less than one hundred sixty feet shall have a shoreline setback line forty feet from the shoreline;
- (C) A lot with an average lot depth of one hundred sixty feet or more shall have a shoreline setback line located at a distance from the shoreline equal to twenty-five percent of the average lot depth, but not more than one hundred fifty feet.

(iii) For irregularly shaped lots, or where cliffs, bluffs, or other topographic features inhibit the safe measurement of boundaries and/or the shoreline, the shoreline setback line will be equivalent to twenty-five percent of the lot's depth as determined by the Director, to a maximum of one hundred fifty feet from the shoreline.】

(1) Setbacks along shorelines will be established at not less than forty feet inland from the shoreline; and

(2) For areas where the erosion hazard line is mapped, the shoreline setback line is measured using the same distance used to map the erosion hazard line at the transect or transects applicable to the lot. The shoreline setback shall be mapped by the department.

(A) An applicant may choose to obtain a shoreline certification pursuant to HAR 13-222, in which case the setback line will be established by applying the distance used to map the erosion hazard line from the certified shoreline.

(B) For areas where the erosion hazard line is mapped and where a shoreline is accreting or where known geologic information indicates a rock formation that is erosion resistant, as determined by the director, the shoreline setback line shall be established pursuant to 12-203-6(a)(3).

(3) For areas where there is no mapped erosion hazard line, the shoreline setback line shall be two hundred feet from the shoreline as mapped by the department, except that:

(A) If the shoreline is established by a certified shoreline survey, then the shoreline setback line shall be calculated based on the lot's depth as follows:

Ⓐ A lot that is not an irregularly shaped lot and that has an average lot depth of one hundred sixty feet or less shall have a shoreline setback line forty feet from the shoreline;

Ⓑ A lot that is not an irregularly shaped lot and that has an average lot depth of more than one hundred sixty feet shall have a shoreline setback line located at a distance from the shoreline equal to twenty-five percent of the average lot depth, but not more than one hundred fifty feet;

Ⓒ For irregularly shaped lots, the shoreline setback line will be the greater of forty feet or twenty-five percent of the lot's depth between its front lot line and rear lot lines as measured perpendicularly from the shoreline, to a maximum of one hundred fifty feet from the shoreline.

(B) In areas where the safe conduct of a certified shoreline survey would be inhibited by cliffs, bluffs, or other topographic features and where the shoreline is fixed by such features, the shoreline setback shall be forty feet as measured from the top of a cliff or bluff, all as determined by the director

(C) In areas where the safe conduct of a certified shoreline

survey would be inhibited by cliffs, bluffs, or other topographic features and where the shoreline is not fixed by such features, the shoreline setback shall be the greater of forty feet or twenty-five percent of the lot's lot depth between its front lot line and rear lot lines as measured perpendicularly from the shoreline, to a maximum of one hundred fifty feet from the approximate shoreline as mapped by the department.

(b) Notwithstanding any provision of this section to the contrary, any structures and activities not otherwise allowed under these rules may be built and carried out within [a lot shall have a shoreline setback line at a distance from the shoreline that provides for the] a lot's minimum buildable depth; provided that, in no case shall [the shoreline setback line] such structures and activities be located less than [twenty-five] forty feet from the shoreline.

(c) Prior to commencement of grubbing, grading, or construction activities, the shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii."

[Eff 12/26/06] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

5. Section 12-203-7 is amended to read as follows:

"§12-203-7 Request for [a shoreline setback determination or an annual erosion hazard rate amendment.] an amendment to a shoreline setback line established by the erosion hazard line or the approximate shoreline mapped by the department. (a) A request for [a shoreline setback determination or an annual erosion hazard rate amendment] an amendment to a shoreline setback line established by the erosion hazard line or the approximate shoreline mapped by the department shall be submitted to the department on a form prescribed by the director and shall be accompanied by applicable information to assist in the [determination,] consideration of the request, which could include [but not be limited to] a certified shoreline survey unless determined by the director to be a naturally stable geologic feature that is not eroding; [construction] development plans, if any; existing and finish contours; photographs of the shoreline [setback] area; written [reasons] justification addressing compliance with the criteria set forth in these rules; an opinion from a coastal engineer, coastal geologist or similar professional setting forth the reasons an amendment is appropriate for the subject lot; and analysis of coastal erosion and shoreline processes. The director shall approve, approve with conditions, or deny a request for a shoreline setback [determination] line amendment in accordance with [the criteria set forth in] these rules. The director shall transmit any request for [an annual erosion hazard rate] a shoreline setback line amendment with all relevant information to appropriate agencies for review and comment. Upon consultation with various agencies, the director shall approve or approve with conditions, a request for [an



annual erosion hazard rate] a shoreline setback line amendment if the director finds that based on clear and convincing evidence the best parcel-specific [estimate of historical shoreline change differs from the established rate.] setback differs from the setback established by the erosion hazard line. The director shall take action on any application for [an annual erosion hazard rate] a shoreline setback line amendment within thirty days from the date final agency comments are received and the application is deemed complete by the director.

(b) The director shall notify the commission, at the commission's next regularly scheduled meeting, of any [application for, or] issuance of[, ] a shoreline setback [determination or annual erosion hazard rate] amendment, receipt of which shall be acknowledged by the commission. Such notification shall include[, but not be limited to,] the name of each applicant, the location and purpose of the development, if any, and the shoreline setback [determination.] line amendment."

[Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

6. Section 12-203-8 is amended to read as follows:

"§12-203-8 Determination of the shoreline. [(a)] The director may require an applicant to provide a certified shoreline survey for any activity in the shoreline area. The shoreline shall be established and certified in accordance with the procedures prescribed by the board of land and natural resources; provided that, no determination of a shoreline shall be valid for a period longer than [twelve months] the duration established by the board of land and natural resources, except for those portions of the shoreline which are fixed by [man-made structures, which have been approved by appropriate government agencies, and for which engineering drawings exist to locate the interface between the shoreline and the structure.] naturally stable geologic features that are not eroding as determined by the director."

[Eff 11/27/03] (Auth: HRS §205A-42; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-42, 205A-43, 205A-43.6, 205A-45)

7. Section 12-203-9 is amended to read as follows:

"§12-203-9 [Site] Development plans. Unless otherwise required by the director, all development and site plans showing the location of the shoreline and shoreline setback line of a lot shall:

- (1) Be drawn to the scale of 1"=20'0";
- (2) Show the shoreline, existing site conditions including human-caused and natural features such as large trees, rock outcroppings, or other known sensitive environmental areas such as special flood hazard area, coastal dune, tsunami zone, erosion hazard line within the parcel, 3.2-foot sea level rise exposure area, wetland, streams, estuary or geologically hazardous land, and existing conditions along properties

immediately adjacent to the subject lot; and

(3) Show contours at a minimum interval of two feet; and

(4) Show all natural and man-made features in the subject area].”

[Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-45)

8. Section 12-203-10 is amended to read as follows:

“§12-203-10 Structures and activities subject to these rules; exceptions. ll structures and activities located or proposed to be located within the shoreline area including subdivisions shall be subject to these rules and conform to the requirements of this chapter. [The] Other than the following exceptions, the requirements of this chapter shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately inland of the shoreline area shall also be subject to these rules until a certified and confirmed survey map, prepared in accordance with the provisions of section 12-203-8 herein, is filed with the department.

The following actions are not subject to these rules and do not require approval pursuant to section 12-203-13, except that these activities may require implementation of relevant best management practices published by the department. Those who propose any use, activity, or operation pursuant to subsections g, h, i, j, and k below in the shoreline area must complete, and submit to the department before the use, activity or operation is initiated, a declaration form as provided by the department and made accessible to the public, that may establish action-specific Best Management Practices and other appropriate restrictions:

(a) Transfer of land title; creation or termination of easements, covenants, or other rights in structure or land that do not impair shoreline access;

(b) Normal and customary agricultural activities on land currently or historically used for such activities, provided that appropriate best management practices to control or minimize pesticide and sediment runoff are implemented to minimize impacts to nearshore waters;

(c) Changes in uses or operations, including changes between short-term and long-term occupancy of dwelling units and various uses of beach parks that are under county or state jurisdiction, that do not increase the density or intensity of use as determined by the director. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements pursuant to title 19, Maui County Code or increased storage needs;

(d) Archaeological, geophysical, percolation, engineering, soils, and other scientific testing conducted by a licensed archaeological or scientific professional involving temporary excavation limited to the minimum extent determined necessary and appropriate or as approved by the State Historic Preservation Division, and employing best management

practices protective of the environment and natural and cultural resources;

(e) Traditional native Hawaiian cultural practices that are conducted or led by native Hawaiian cultural practitioners and that do not negatively impact the shoreline area; this includes protection and stabilization of iwi kupuna using best management practices.

(f) During the applicable timeframe of a Governor's or Mayor's disaster or emergency declaration or proclamation, while required permits for work that should follow code such as electrical, plumbing, and building permits are obtained and while using best management practices to protect natural and cultural resources:

(i) the removal and disposal of disaster debris that does not expand the area of disturbance; emergency structure stabilization and control erosion and runoff;

(ii) emergency repairs to roofs and windows that do not expand the footprint or use of the habitable structure while required permits are obtained;

(iii) emergency installation of protective measures to secure habitable structures provided such measures are temporary and do not harden the shoreline.

(g) Nonstructural interior maintenance, repairs, and renovations to existing, lawfully established structures that involve no expansion, no ground disturbance, and do not increase the density or intensity of use, such as paint, floors, carpets, cabinets, and interior walls and doors, limited to a cumulative valuation of less than \$500,000 in any 24-month period for a single ownership on a single lot or set of lots composing a unified building site, provided a declaration is filed with the department committing to implementing best management practices required by the department. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements pursuant to title 19, Maui County Code, increased storage needs, or other effects as determined by the director;

(h) Nonstructural exterior maintenance, repairs, and renovations to existing, lawfully established structures that involve no ground disturbance, such as doors, windows, shutters, siding, roof repairs or replacement and, for structures erected in 1981 or after, to protect against impacts from lead-based paint, painting with related preparatory work, limited to a cumulative valuation of less than \$500,000 in any 24-month period for a single ownership on a single lot or set of lots composing a unified building site, provided a declaration is filed with the department committing to implementing best management practices required by the department;

(i) Operation and maintenance activities for existing public roadways and drainage systems, subject to approval by the applicable state or county agency, such as vegetation management activities,

including tree trimming and cutting and vegetation removal, and clearing obstructions including beach sand accumulations that block publicly-owned drainage ways, provided that beach sand is placed on adjacent beaches or dunes, and the obstruction consists solely of beach sand that is removed to the minimum volume and depth necessary to allow for passage of flood waters, and including roadway pavement patching, repair, restriping and grooving but not including resealing, resurfacing or reconstruction, and provided a declaration is filed with the department committing to implementing best management practices required by the department.

(j) With the application of best management practices to protect the marine and land environment, emergency protection of water, wastewater or stormwater infrastructure managed by the Department of Water Supply, Department of Environmental Management, or the Department of Public Works when such infrastructure at imminent risk of failure which would substantially affect public health or safety, including significant water loss, or contamination of surface water, land, or water supply, provided a declaration is filed with the department.

(k) Patching, repairs, and resurfacing of existing driveways and parking lots less than 1,000 square feet provided a declaration is filed with the department committing to implementing best management practices required by the department.

[Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-45)

9. Section 12-203-11 is amended to read as follows:

“§12-203-11 Prohibited activities within the shoreline area. 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)] (1) The taking from the shoreline area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or]

[(2)] (1) Where the mining or taking is authorized by a variance pursuant to these rules; or

[(3)] (2) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under HRS section 46-11.5; provided that, the sand is removed to the minimum volume and depth necessary to allow for passage of flood waters and shall be placed on adjacent areas unless such placement would result in significant turbidity or would otherwise be detrimental to the shoreline environment; or

[(4)] (3) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity[.] or would otherwise be detrimental to the shoreline environment.”

[Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§46-11.5, 46-12, 205A-43.6, 205A-44, 205A-45)

10. Section 12-203-12 is amended to read as follows:

“§12-203-12 [Permitted] Allowable structures and activities within the shoreline [setback] area. (a) The following structures and activities [are] may be permitted in the shoreline [setback] area subject to the application and approval procedures pursuant to section 12-203-13:

- (1) Existing lawful nonconforming [structures/activities.] structures or activities.
- (2) A structure or activity that received a shoreline variance or administrative approval from the director prior to the adoption of these rules[. Said] provided the variance [/] or approval [be] remains valid.
- (3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline [setback] area on June 16, 1989.
- (4) A structure or activity that consists of maintenance, repair, [reconstruction,] and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, [which are publicly owned,] and Hawaiian fishponds, and [which result] that results in no interference with natural beach processes; provided that the permitted structure may be repaired, but shall not be enlarged within the shoreline [setback] area without a variance.
- (5) Structural and nonstructural repairs (excluding those caused by coastal hazards), renovations, and improvements to a lawful nonconforming structure beyond those allowed pursuant to section 12-203-10, provided that:
  - (A) The structural and nonstructural repairs, renovations or improvements are less than 50 percent of the current replacement cost of the structure over a cumulative ten-year period; or, if the valuation is cumulatively 50 percent or greater within a ten-year period, the work must be authorized by a special management area use permit approved by the commission, regardless of any rule to the contrary.
  - (B) The structural and nonstructural repairs, renovations or improvements do not enlarge or expand the structure or intensifies the structure's use; and
  - (C) The structural and nonstructural repairs, renovations or improvements are permitted by the building code, flood hazard regulations, and special management area law.

- (6) Structural and nonstructural repairs to, and restoration of, a lawful nonconforming structure beyond those allowed pursuant to sections 12-203-10 and 12-203-12(a)(6), in response to damage by fire, insects, wind, named hurricanes or tsunamis with disaster declaration, accidental means, or other calamity excluding all other coastal hazards, provided that:
- (A) The structural and nonstructural repairs or restoration are proportional to the damage.
  - (B) The structural and nonstructural repairs, or restoration do not enlarge or expand the structure or intensify the structure's use;
  - (C) The structural and nonstructural repairs or restoration are permitted by the building code, flood hazard regulations, and special management area law; and
  - (D) For the purposes of this subsection, "restoration" means returning the structure to its former condition.
- (7) Structural and nonstructural repairs to a lawful nonconforming structure beyond those allowed pursuant to sections 12-203-10, 12-203-12(a)(5) and 12-203-12(a)(6) in a manner that is proportional and directly related to damage by coastal hazards that are chronic or recurring including wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and non-point source pollution, provided that:
- (A) The structural and nonstructural repairs are limited to 10 percent of the current replacement cost of the structure over a cumulative ten-year period. If the cost is cumulatively more than 10 percent, with a maximum of 50 percent of the current replacement cost of the structure within a ten-year period, the work must be authorized by a special management area use permit approved by the commission, regardless of any rule to the contrary;
  - (B) The structural and nonstructural repairs do not enlarge or expand the structure in a way that increases the nonconformity or intensify the structure's use;
  - (C) The structural and nonstructural repairs shall be permitted by the building code, flood hazard regulations, and special management area law;
  - (D) The structural and nonstructural repairs shall be either in the same location, be located mauka or be in an area less vulnerable to coastal hazards;
  - (E) This subsection shall not limit structural and nonstructural repairs to public infrastructure such as

- waterlines, wastewater lines, drainage systems, warning sirens, and roadways if repairs are necessary to system functionality and relocation or retreat of such infrastructure is not practicable;
- (F) A coastal hazard mitigation plan, which contains an avoidance alternative, is required to be prepared and submitted as part of the special management area permit application to conduct structural and nonstructural repairs under this subsection; and
- (G) The applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Maui harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from coastal natural hazards and coastal erosion.
- (8) A lawfully constructed shoreline hardening structure that protects a habitable structure may be repaired or maintained with like-for-like materials up to 50 percent of the shoreline hardening structure's replacement value over a cumulative ten-year period; otherwise the shoreline hardening structure shall not be repaired and shall be demolished and removed. The applicant shall provide a professionally certified construction estimate to demonstrate the replacement cost of the shoreline hardening structure, along with its size and dimensions, and documentation or evidence of the shoreline hardening structure being lawfully nonconforming. The continued reliance on shoreline hardening structures is not recommended and applicants must provide a coastal hazard mitigation plan, which contains an avoidance alternative, as part of the application. The repairs or maintenance shall not substantially exceed the size, height or density of the original shoreline hardening structure and shall implement BMPs;
- (9) Lawfully constructed shoreline hardening structures that protect a public structure or infrastructure may be repaired or maintained with like-for-like materials up to 50 percent of its replacement value over a cumulative ten-year period; otherwise, the work must be authorized by a special management area permit approved by the commission. The applicant shall provide a professionally certified construction estimate to demonstrate the replacement cost of the structure, along with its size and dimensions, and documentation or evidence of the structure being lawfully nonconforming. The continued reliance on shoreline hardening structures is not recommended and applicants must provide a coastal hazard mitigation plan, which contains an avoidance alternative, as

part of the application. The repairs or maintenance shall not substantially exceed the size, height or density of the original structure and shall implement BMPs;

~~[(7)]~~(10) Qualified demolition;

~~[(8)]~~(11) Beach nourishment/dune restoration Beach-nourishment, dune-restoration, sand-pushing, and coastal revegetation projects approved by all applicable governmental agencies;

~~[(9)]~~(12) A structure or activity that has been determined by the director to be a minor structure or minor activity within the shoreline setback area which that does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline and which meets the purpose of this chapter, HRS chapter 205A, as amended, and chapter 19.62, Maui County Code, relating to coastal high hazard districts, the building code, flood hazard regulations, and special management area requirements;

(13) Adaptation of existing lawful or lawful nonconforming structures in response to their location within SLRXA, including relocation of a structure mauka of the SLRXA, reducing the size of a structure, elevating a structure within the existing footprint;

~~[(10)]~~(14) Emergency protection of an imminently threatened legally habitable structure, or infrastructure at imminent risk of failure which would substantially affect public health or safety, provided that:

- a. The protection is temporary and is removed within one hundred eighty calendar (180) days of installation;
- b. The protection receives approval in accordance with section 12-202-16, special management area rules of the Maui planning commission; and
- c. Given the significance of the emergency, the protection is the best management alternative in relation to beach, shoreline, and coastal resource conservation.]

Activities that have received a special management area emergency permit pursuant to section 12-202-16 of the special management area rules for the Maui planning commission;

(15) Nonstructural single-story enclosures of existing, lawfully established roofed residential lanais, decks, patios, balconies, carports, or similar structures that are accessory to single-family dwellings and multi-family dwellings and that are included in the definition of "floor area" in title 19 of the Maui County Code;

(16) Repair, construction, or reconstruction of critical public



- infrastructure beyond the activities allowed pursuant to section 12-203-10;
- (17) Utility poles, tsunami sirens built to approved standard specifications, and accessory utility structures along existing utility corridors;
- (18) Uses and structures established pursuant to section 12-203-6(b);
- (19) Additions and alterations of structures, or intensification of use that involve only existing lawful structures and uses to which they are subordinate and which are protected for their useful life by being located mauka of public facilities that are protected by shoreline hardening or natural features not subject to erosion, or the director determines that alterations will elevate the entire structure to be adequately protected for its useful life;
- (20) For areas protected by beach nourishment, new non-habitable, portable structures and uses within forty feet immediately makai of a lot's minimum buildable depth, that are accessory to lawful structures and uses and that will be protected for their useful life by being located mauka of shorelines protected by beach nourishment;
- (21) Structures, such as wooden dune walkovers, that will enhance either vertical or lateral public shoreline access provided that they do not adversely affect beach processes, artificially fix the shoreline, or interfere with public access or public views to and along the shoreline;
- (22) Exterior installation on and maintenance, repairs, and renovations to existing, lawfully established structures that involve no ground disturbance and that are nonstructural, such as signage, wireless antennae and other transmission equipment, satellite dishes, and roof mounted equipment, such as photovoltaic and solar panels;
- (23) Patching, repairs, and resurfacing of existing driveways and parking lots greater than 1,000 square feet, including low impact development features as detailed in Hawaii's Low Impact Development Guide or other guidance where appropriate;
- (24) When associated with an existing lawful structure, site improvements, involving limited ground disturbance, such as installation of turf, shallow landscaping, irrigation, and manual invasive species control that does not use herbicides and does not involve grubbing or earth moving, installation of permeable pavement, and replacement of asphalt or concrete slabs and driveways;

- (25) When associated with an existing lawful structure, site improvements, involving limited ground disturbance such as the installation, removal, or maintenance of trees and shrubs and landscaping management plan implementation, utility pedestals, ground signs, water, sewer, and conduit lines, walls and fences up to four feet in height, telephone and light poles, mailbox posts, and solar panels, provided that that this does not include new wireless telecommunications towers, windmills and wind turbines;
- (26) Subdivisions in the shoreline area which ensure proposed development will be placed mauka of the shoreline setback line and allow for a minimum buildable area for all subdivided lots and which provide public shoreline access;
- (27) Restaurant dining areas that do not exceed a total of 2,000 square feet within the established shoreline setback area per restaurant. Such use shall involve no ground-altering activity; shall not impede the natural movement of the shoreline, dunes, or vegetation; shall not impede public shoreline access or existing walkways; and shall be removed upon imminent threat of erosion, storm impact, or other anticipated hazard or calamity;
- (28) Conversion of cesspools to centralized or Department of Health approved individual wastewater systems where relocation outside of the shoreline setback is not feasible.

(b) All structures and activities not specifically permitted in this section are prohibited.

(c) If any new structures that are approved subject to a shoreline setback variance are proposed to be located within the shoreline [setback] area, the following restrictions shall apply:

[(1)] All new structures shall be elevated on pilings or columns, in accordance with the standards for development in chapter 19.62, Maui County Code, relating to coastal high hazard districts, so that the lowest horizontal portion of the structural members of the lowest floor is elevated above the base flood elevation, or above existing grade, whichever is greater.]

[(2)] (1) The applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Maui harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from coastal natural hazards and coastal erosion.

[(3)] (2) The construction of [all erosion control or] shoreline hardening structures or activities [with the exception of beach or dune nourishment activities, and landscape planting and irrigation,] shall be prohibited throughout the life of the structure or activity.

The requirements of subsections (c)(1) and (c)(2) and shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court prior to the date of approval of all structures or activities. A copy of the recorded unilateral agreement shall be filed with the director and the director of public works.

[D](d) Minor structures or activities shall be completed or operating within one year from the later of the date of the department's determination or the date of approval of the last discretionary permit."

[Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44, 205A-45; MCC Chapter 19.62)

11. Section 12-203-12.5 is added to read as follows:

"§12-203-12.5 Abandoned structures or structures imminently threatened by erosion. So that the structure does not become a hazard or threat to the public health, safety or welfare, or to cultural or natural resources, if a structure in the shoreline area is imminently threatened by erosion or abandoned, the property owner must apply for a qualified demolition pursuant to §12-203-12(a)(7) within 180 days of discovery; the property owner must initiate demolition within 180 days of approval and must complete demolition within 180 days of initiation, unless additional time is approved by the director."

12. Section 12-203-13 is amended to read as follows:

"§12-203-13 Request for [a determination of] approval of structures and activities in the shoreline [setback] area. (a) [All] Other than the exceptions listed in §12-203-10, all proposed structures and activities in the shoreline [setback] area shall be subject to an assessment made by the director.

A request for [a determination] approval of structures and activities in the shoreline [setback] area shall be submitted to the department on a form prescribed by the director and shall be accompanied by applicable information to assist in the [determination,] assessment, which may include, but not be limited to; a certified shoreline survey; construction plans; a list of proposed plants and their growth at maturation; existing and finish contours; flood zones; topography; proximity to the shoreline; [andy] any and all shoreline hardening structures; photographs of the shoreline [setback] area; an environmental assessment; written reasons addressing compliance with the criteria set forth in these rules; an analysis of coastal erosion rates and shoreline processes; and an analysis of the impacts to public access to and along the shoreline. If the proposed structure or activity adversely affects public access to or along the shoreline, approval may be conditioned on providing adequate public access. The director shall approve, approve with conditions, or deny such request in accordance with the criteria set forth in these rules, and chapter 12-202 of the special management area rules for the Maui planning commission.

(b) The director shall notify the commission, at the commission's next regularly scheduled meeting, of any application for, or issuance of,

[determination] approval of structures and activities in the shoreline [setback] area, receipt of which shall be acknowledged by the commission. Such notification shall include[, but not be limited to,] the name of each applicant[, ] and the location [and purpose of the development, and the shoreline setback determination].”

[Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44, 205A-45)

13. Section 12-203-14 is amended to read as follows:

“§12-203-14 Variance application. (a) A written application for a variance from shoreline setback requirements shall be made in a form prescribed by the director and shall be filed with the director. The application shall include development plans, site plans, photographs, and any other plans, drawings, maps, or [data] information determined by the director to be necessary to evaluate the application. The application shall also include:

- (1) An administrative fee as established in the County budget;
- (2) Certification from the owner or lessee of the lot [which authorizes] authorizing the application for variance;
- (3) An environmental assessment or environmental impact statement prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawaii, or a chapter 343 exemption determination;
- (4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity, or operation is to occur;
- (5) A development plan and site plan of the shoreline [setback] area, drawn to scale; [, showing:
  - (A) Existing natural and man-made features and conditions within the shoreline setback area;
  - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
  - (C) The certified shoreline and the shoreline setback line;
  - (D) Contours at a minimum interval of two feet unless waived by the director; and
  - (E)** Proposed development and improvements showing new conditions;]
- (6) A copy of the certified shoreline survey of the property;
- (7) Detailed justification of the proposed project[, which] that addresses the purpose and intent of these rules and the criteria for approval of a variance;
- (8) Analysis of historical and anticipated coastal erosion [rates]

and coastal processes[;] related to the subject property; and

(9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS chapter 205A, part III, and this chapter, the director shall submit the application to the commission. If the application is determined to be incomplete by the director, the director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The director shall submit a written report, and all [a copy of the application, and all other documents submitted on the application] relevant documents and information to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property [which abut] that abuts or is adjacent to the parcel that is the subject of the application. Not less than thirty days prior to the public hearing date, the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

[(d) Exceptions. Prior to action on a variance application, the commission may waive a public hearing on the 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; provided that, the structure is at risk of immediate damage from shoreline erosion;
- (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. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Maui, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the commission; or
- (4) Maintenance, repair, reconstruction, and minor additions or alternations of legal boating, maritime or water sports recreational facilities, which result in little or no interference with natural shoreline processes.]”

[Eff 11/27/03] (Auth: HRS §§205A-43.5, 205A-46, 343-5; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.5, 205A-46, 343-5)

14. Section 12-203-15 is amended to read as follows:

“§12-203-15 Criteria for approval of a variance. (a) A [shoreline area] variance may be granted for a structure or activity otherwise prohibited by this chapter, if the commission finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that, the commission 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 HRS chapter 269;
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements [which] that will [neither] not adversely affect beach processes, result in flanking shoreline erosion, nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that, the commission finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; and provided further that, the commission imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest, and provided that that the improvements or facilities shall not be in areas with sand beaches or where artificially fixing the shoreline may interfere with existing recreational or waterline activities unless it is clearly in the public interest; or
- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that, the commission also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of the public beach, and will be necessary to stabilize an eroding shoreline.

(b) A structure or activity may be granted a variance upon grounds of hardship if:

- (1) The applicant would be deprived of reasonable use of the land if required to fully comply with the shoreline [setback] rules;

- (2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline [setback] rules; and
- (3) The proposal is the practicable alternative [which] that best conforms to the purpose of [the shoreline setback] these rules.

(c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions, and the geography of the lot.

(d) For purposes of this section, hardship shall not include: economic hardship to the applicant; [county] County zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; any other permit or approval [which] that may have been issued by the commission. If the hardship is a result of actions by the applicant, such result shall not be considered a hardship for purposes of this section.

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

- (1) To maintain and require safe lateral access to and along the shoreline for public use 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 or rubble on public property;[and]
- (4) To minimize adverse impacts on public views to, from, and along the shoreline. For purposes of this section only, "adversely impacts public views" means the adverse impact on public views and open space resources caused by new building structures exceeding a one-story or thirty-foot height limitation; and
- (5) To comply with chapters 19.62 and 20.08, Maui County Code, relating to flood hazard districts and erosion and sedimentation control respectively.

(f) Notwithstanding any provision of this section to the contrary, the commission may consider granting a variance for the protection of a legal [habitable] structure or public infrastructure; provided that, the structure is at risk of damage from coastal erosion, poses a danger to the health, safety and welfare of the public, and is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(g) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of section 12-202-17 of the special management area rules of the Maui planning commission."

[Eff 11/27/03] (Auth: HRS §205A-43.5, 205A-46; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.5, 205A-46; MCC Chapters 19.62, 20.08)

15. Section 12-203-16 is amended to read as follows:

“§12-203-16 Enforcement. (a) The director shall enforce these rules in accordance with HRS chapter 205A.

(b) Any use, activity, construction, or operation pursuant to these rules and chapter 205A, HRS, as amended, that requires and fails to obtain shoreline approval or a variance, or has failed to comply with conditions established with any such approval, is a violation of these rules and chapter 205A, HRS. The violation shall be corrected by requiring the owner or violator to pay all applicable fines and take the following corrective actions:

- (1) Cease any unpermitted use, activity, or operation;
- (2) Remove, with appropriate permits, any unpermitted construction;
- (3) Obtain a shoreline approval or variance; or
- (4) Other means determined by the director have been achieved. Applicable fines shall accrue until the violation is corrected. No other permit or approval shall be construed as shoreline approval pursuant to this part.

(c) If a portion of a constructed structure is situated within the shoreline area, and the structure has not been authorized with government agency permits required by law, then for purposes of enforcement of this part, the entire structure shall be construed to be entirely within the shoreline area and shall be subject to enforcement accordingly.

(d) Issuance of notice of violation and order.

- (1) The owner shall, and the alleged violator may, be notified by the enforcement agency of an alleged violation of these rules and any approval, variance, or condition issued pursuant thereto. The director shall provide service by at least one of the following methods: certified or registered mail, regular mail with delivery confirmation, or personal service. If, after a reasonable effort has been made at least twice and is documented, and the owner and alleged violator have not been served, the director may provide service by posting on the property or by publishing the notice once per week for three consecutive weeks in a newspaper that is printed and issued at least twice weekly in the County and is generally circulated through the County. The date of service shall be the date on which the certified or registered mail is accepted, the date of regular mail delivery confirmation, the date of personal service, the date of posting on the property, or the date of the last publication in the newspaper.
- (2) The notice of violation and order shall include the specific section of these rules that has been violated; the nature of the violation; and the remedy required or available, including



cessation or removal of the violation, subject to applicable permitting requirements; that an initial civil fine be paid not to exceed \$100,000 per violation; that a civil fine be paid not to exceed \$10,000 per day for each day in which the violation persists, unless otherwise required or allowed by statute, in addition to the foregoing and any other penalties; and that the landowner or violator may appeal the notice of violation pursuant to section 12-203-18 within thirty days of the date of service. The filing of an appeal shall not correct or suspend any violation or stay the assessment and accumulation of fines. The following and other applicable and reasonable criteria shall be considered in assessing the initial and daily fines:

- (A) Previous violations by the same person;
- (B) The degree of damage to the environment, including damage to the shoreline and marine resources;
- (C) The degree of cooperation provided by the violator during the investigation;
- (D) Amount necessary to deter future violations;
- (E) Evidence of circumstances beyond the control of the violator;
- (F) Whether the owner or violator knew or should have known that assessments or approvals were required; and
- (G) The amount of time and resources required by the department to investigate and determine that a violation occurred.
- (H) Whether the owner or violator has financially benefitted from the unpermitted use, activity or structure.

(3) The department, in consultation with the department of the corporation counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.

(4) Nothing in this section shall prohibit the department, through the corporation counsel, from filing an order or motion directly with a court in the event that public health, safety and welfare may be at risk.

Appeals of violations shall be processed pursuant to Subchapter 8 of the Commission's Rules of Practice and Procedure.

[Eff 11/27/03] (Auth: HRS §205A-43.6; Maui County Charter §§8-8.4, 13-2(15))  
(Imp: HRS §205A-43.6)

16. Section 12-203-18 is amended to read as follows:

“§12-203-18 Appeal of director’s decision; filing the notice of appeal. (a) Appeals of violations shall be processed pursuant to Subchapter 8 of the Commission's Rules of Practice and Procedure. Appeal of the director’s decision including, but not limited to, the validity of the [annual erosion hazard rate, and] erosion hazard line, and the determination of minor [structures/activities,] structures or activities, may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director’s written decision or, where the director’s decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director’s decision. The notice of appeal shall be filed in accordance with section 12-201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission’s next regularly scheduled meeting, of the filing of the notice of appeal.

(b) For decisions other than enforcement proceedings pursuant to section 12-203-16, appeal of the director’s decision may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director’s written decision, or, where the director’s decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director’s decision. For enforcement proceedings pursuant to section 12-203-16, appeal of a notice of violation may be made to the commission by the filing of a notice of appeal with the department within thirty days of the date of service. The notice of appeal shall be filed in accordance with section 12-201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission’s next regularly scheduled meeting, of the filing of the notice of appeal.

(c) The director and the owner, violator or Appellant may negotiate a resolution to the violation, other dispute or appeal.

(d) The director and the owner, violator or Appellant may agree on a resolution that includes a reduction of any accumulated fines and correction of the violation, if applicable. If the resolution reduces the accumulated fines by \$50,000 or less, then the director will notify the owner or violator in writing and establish which party shall draft the agreement. At the commission’s next regularly scheduled meeting, the director shall notify the commission of the agreement, receipt of which shall be acknowledged by the commission.

(e) If the director and the owner or violator agree on a resolution that reduces the accumulated fines by more than \$50,000, then the director will notify the owner or violator in writing and establish which party shall draft the agreement. The agreement shall be submitted to the commission for final action. The commission may accept, accept with modifications, or reject the agreement.”  
[Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

17. Section 12-203-23 is amended to read as follows:

“§12-203-23 Contested case hearing on appeal. The commission shall hold a contested case hearing on the appeal. The director, the appellant, and, where the appellant is someone other than the applicant, the applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of chapter 12-201 of the rules of practice and procedure for the Maui planning commission, relating to petitions to intervene, contested case procedures, and [post hearing] post-hearing procedures, respectively, shall govern the proceedings, except that petitions to intervene on an appeal shall be filed with the commission no later than ten days after the meeting at which the commission received notification of the filing of an appeal.”

[Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

18. Material to be repealed is bracketed. New material is underscored. In printing these rules, the department need not include the brackets, the bracketed material, or the underscoring.

19. These rules shall take effect 30 days after filing with the Office of the County Clerk. Applications submitted prior to the effective date shall be processed in accordance with the rules in effect at the time the application was submitted.

2019-1089

2023-3-28 Ch 203 Shoreline Rules (Ramseyer)

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

MAUI PLANNING COMMISSION

\_\_\_\_\_  
KELLIE PALI  
Chairperson

\_\_\_\_\_  
RICHARD BISSEN

Mayor, County of Maui

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

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
MICHAEL HOPPER  
Deputy Corporation Counsel  
County of Maui  
LF2019-1089  
2023-3-28 Ch 203 Shoreline Rules (Ramseyer)

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

\_\_\_\_\_  
MOANA LUTEY  
Clerk, County of Maui

CERTIFICATION

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

1. That the foregoing is a full, true, and correct copy of the amendments to Chapter 203, Shoreline Rules for the Maui Planning Commission, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the \_\_\_ day of , 20 , by affirmative vote of the proper majority following a public hearing on the \_\_\_ day of \_\_\_\_\_, 20 , and filed with the Office of the County Clerk.
2. That the notice of public hearing on the foregoing rules was published in The Maui News on the \_\_\_\_\_ day, of \_\_\_\_\_, 20 .

COUNTY OF MAUI

\_\_\_\_\_  
KATHLEEN ROSS AOKI  
Planning Director

DEPARTMENT OF PLANNING

COUNTY OF MAUI

Amendments to Title MC-12, Chapter 203

Shoreline Rules for the Maui Planning Commission

SUMMARY

1. §12-203-2 is amended.
2. §12-203-3 is amended.
3. §12-203-4 is amended.
4. §12-203-6 is amended.
5. §12-203-7 is amended.
6. §12-203-8 is amended.
7. §12-203-9 is amended.
8. §12-203-10 is amended.
9. §12-203-11 is amended.
10. §12-203-12 is amended.
11. §12-203-12.1 is added.
12. §12-203-13 is amended.
13. §12-203-14 is amended.
14. §12-203-15 is amended.
15. §12-203-16 is amended.
16. §12-203-18 is amended.

17. §12-203-23 is amended.

“Subchapter 1      General Provisions

- §12-203-1      Title
- §12-203-2      Purpose
- §12-203-3      Applicability
- §12-203-4      Definitions
- §12-203-5      Severability

Subchapter 2      Shoreline Setback Lines; Shoreline Area

- §12-203-6      Establishment of shoreline setback lines
- §12-203-7      Request for an amendment to a shoreline setback line established by the erosion hazard line
- §12-203-8      Determination of the shoreline
- §12-203-9      Site plans
- §12-203-10     Structures and activities subject to these rules
- §12-203-11     Prohibited activities within the shoreline area
- §12-203-12     Allowable structures and activities within the shoreline area
- §12-203-12.1   Abandoned structures or structures imminently threatened by erosion
- §12-203-13     Request for approval of structures and activities in the shoreline area

Subchapter 3      Variances

- §12-203-14     Variance application
- §12-203-15     Criteria for approval of a variance

Subchapter 4      Enforcement; Penalties

- §12-203-16     Enforcement
- §12-203-17     Penalties



## Subchapter 5 Appeals

§12-203-18	Appeal of director's decision; filing the notice of appeal
§12-203-19	Content of the notice of appeal
§12-203-20	Joint or consolidated appeals
§12-203-21	Service of the notice of appeal
§12-203-22	Payment of fees
§12-203-23	Contested case hearing on appeal
§12-203-24	Disposition of appeal

Amendments to Title MC-12, Chapter 203

Shoreline Rules for the Maui Planning Commission

1. Section 12-203-2 is amended to read as follows:

**“§12-203-2 Purpose.** (a) The purpose of this chapter is to establish shoreline rules that regulate the use and activities of land within the shoreline environment in order to protect the safety and welfare of the public by providing protection from coastal natural hazards; and to ensure that the public use and enjoyment of our coastal resources are preserved and protected for future generations in accordance with the Hawaii coastal zone management law, Hawaii Revised Statutes chapter 205A.

(b) One of the most important and significant natural resources of the County of Maui is its shoreline environment. Due to competing demands for utilization and preservation of the beach and ocean resources, it is imperative:

- (1) That use and enjoyment of the shoreline area be ensured for the public to the fullest extent possible;
- (2) That the natural shoreline environment be preserved;
- (3) That constructed features in the shoreline area be limited to features compatible with the shoreline area;
- (4) That the natural movement of the shoreline be protected from development;
- (5) That the quality of scenic and open space resources be protected, preserved, and where desirable, restored; and
- (6) That adequate public access to and along the shoreline be provided.

These steps are necessary because development and other constructed improvements have resulted in encroachment of structures near the shoreline and, in numerous instances, erosion and other disturbances affecting the natural movement of the shoreline. Moreover, these steps are also necessary because the Hawaiian Islands are subject to coastal natural hazards such as tsunamis, high wave action, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose hazards to residences and other structures near the shoreline. Shoreline hardening has historically been the response to impacts from coastal hazards such as shoreline erosion, and this approach is now widely recognized in most cases to have an adverse impact on neighboring properties and the beach system. To prioritize coastal resilience, and to preserve and restore coastal and cultural resources, preferred alternatives include options for nature-based protection, and to avoid, accommodate, or shift away from coastal hazards.” [Eff 11/27/03; 08/25/24] (Auth:

HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)

2. Section 12-203-3 is amended to read as follows:

**“§12-203-3 Applicability.** These rules shall be applicable to all lands located within the shoreline area of the Island of Maui, County of Maui, State of Hawaii. The director shall administer this chapter.” [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)

3. Section 12-203-4 is amended to read as follows:

**“§12-203-4 Definitions.** For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future detrimental effect on beach processes as a result of a structure or activity located within the shoreline area, or to pose the need to artificially fix the shoreline.

"Artificially fix the shoreline" means to permanently establish the shoreline.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three.

"Beach nourishment" means the technique of placing sand or cobble fill consistent with existing beach conditions along the shoreline to widen the beach and provide a buffer against coastal erosion and wave attack.

"Best Management Practices" or "BMPs" means a set of mitigation actions that are intended to protect the environment from harm and to ensure that water quality and marine resources are protected during all phases of a project or activity.

"Board approval" means approval of the board of land and natural resources pursuant to HRS section 183-C, as amended.

"Calamity" means any episodic non-chronic event producing sudden and severe damage or risk of imminent severe damage or threat to public health or safety within the reasonably foreseeable future.

"Certified shoreline survey" means the actual field location of the

shoreline prepared by a land surveyor registered in the State of Hawaii that is signed, dated, and certified by the chairperson of the board of land and natural resources.

“Coastal dune” means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated wind or wave driven marine sand continuous and immediately landward of the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters as defined by chapter 20.08, Maui County Code.

"Coastal erosion" means the wearing away of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline (vegetation line) retreat.

"Coastal hazards" means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution, as defined by HRS 205A-1.

"Commission" means the Maui planning commission.

"Department" means the department of planning of the County of Maui.

"Development plan" means a detailed drawing to scale that shows the proposed activity or structure and all areas where work will be performed.

The plan shall include:

- (1) Property boundaries;
- (2) All existing natural and constructed features and conditions that occur within the proposed area of work; and
- (3) All proposed modifications to existing features, such as excavation or other ground-altering activity (length, width, and depth), and proposed new features and conditions.

The director may require that the plan include an accurate instrument survey of the lot as well as cross sections of the lot at designated locations to be prepared by a surveyor licensed in the State of Hawaii.

"Director" means director of the department of planning.

"Dune restoration" means the technique of rebuilding an eroded or degraded dune through one or more various methods, such as sand fill, drift fencing, or revegetation.

"Erosion hazard line" means the mapped, 80 percent, cumulative probability contour of the coastal erosion hazard zone with 3.2 feet of sea level rise on the date these rules were adopted. The erosion hazard line must reflect the best available science as published in peer reviewed literature such as the Hawaii Climate Change Mitigation and Adaptation Commission's 2017 Hawaii Sea Level Rise Vulnerability and Adaptation Report, as accessible within the Hawaii Sea Level Rise Viewer hosted by the Pacific Islands Ocean Observing System. The erosion hazard line and

resulting setback mapped by the Department may need to be updated to reflect future updates and reports based on best available science, with such updates “being subject to review by the Commission within 12 months of the release of said science.”

"Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.

“Ground altering” or “ground disturbance” means grading, trenching, digging, grubbing, excavating or otherwise moving soil or other natural material that comprises the surface and subsurface of a parcel of land to the extent that such activity could potentially impact cultural or natural resources as determined by the director.

"HRS" means the Hawaii Revised Statutes, as amended.

“Irregularly shaped lot” means a flag lot, triangular parcel, lot bordered by ocean on two or more sides, headland, or peninsula.

"Lot" means a designated parcel, tract, or area of land established by subdivision or as otherwise established prior to the adoption of subdivision laws.

“Makai” means seaward.

“Mauka” means inland.

"Minimum buildable depth" means the minimum depth that a structure may be constructed taken from a line running makai of and parallel to the front yard or most landward setback, not to exceed 40 feet in length.

"Minor activity" means an activity that does not adversely impact the existing grade of the setback area and shall be limited to activities related to landscaping, minor clearing (grubbing) of vegetation, soil testing, archaeological trenching, and minor grading which is not subject to HRS chapter 343, provided that best management practices are employed.

"Minor structure" means a structure that costs less than \$250,000, does not impede the natural movement of the shoreline, and does not significantly alter the existing grade of the shoreline area, including the following:

- (1) Landscape features such as barbecues, lighting, benches, chairs, borders, wooden trellis, fences, railings, bird feeders, signs, and safety improvements;
- (2) Movable or portable lifeguard stands;
- (3) Landscaping and drywells;
- (4) Irrigation systems, provided they are directed away from and do not result in impermissible encumbrances to the shoreline;
- (5) Outdoor shower and water faucets;
- (6) Temporary tents for special events conducted by commercial or non-profit entities not exceeding fourteen consecutive days in duration during any three-month period; and

- (7) Portable or movable walkways for public access, such as wooden or composite boardwalks or dune walkovers or structures providing access that primarily benefit the public, as determined by the director.

A minor structure shall not include a pool, spa, gazebo, carport, garage, or a similarly massed structure of a permanent nature.

“Nonconforming structure/activity, lawful” means a structure or activity within the shoreline area and either was completely built or initiated prior to June 22, 1970 or received all applicable and required permits and approvals for all structures and activities prior to the effective date of these rules.

“Nonstructural improvement” or “nonstructural” is or describes any improvement, maintenance, repair or renovation which does not materially alter the load-bearing components essential to the stability of the overall structure. Nonstructural improvements may include, but are not limited to, window or door replacement or additions, reroofing, storage sheds, fencing, signage, low impact development parking lot improvements, addition of solar panels that do not significantly alter building height or previously developed land area, or other activities that do not affect the integrity of a structure as defined in HRS 205A-22.

“Qualified demolition” means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with:
  - (A) The purpose of these rules; and
  - (B) Section 205A-2(c)(3)(C), HRS, which states that an objective and policy of the coastal zone management program is to preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
- (6) Will comply with:
  - (A) Chapter 19.62, Maui County Code, relating to flood hazard areas;
  - (B) Chapter 20.08, Maui County Code, relating to soil erosion and sedimentation control; and
  - (C) Chapter 6E, HRS, relating to historic preservation.

“Reconstruction” means rebuilding more than 75 percent of an entire structure as measured by the current valuation.

"Renovation" means the remodel, update, or upgrade of a structure that does not increase existing height or floor area and is not reconstruction.

"Repair" means the fixing or replacing of any part of an existing structure for the purpose of its maintenance, or renewal of surface treatments such as painting, carpeting, or exterior siding with substantially similar use of materials and location, but does not include expansion of use or intensity, reconstruction or renovation.

"Restaurant dining area" means an outdoor seating area that includes movable tables and chairs, and may include movable umbrellas, for customers of a restaurant where food or beverages are served and consumed; this does not include a bar, kitchen or other facility where food or beverages are prepared.

"Sand" means particles of mineralogic or rock material ranging in diameter from 0.0625 millimeters to 2 millimeters that shall be substantially clean of rubble and debris; shall contain no more than fifteen percent volume of silt which ranges in diameter from 0.039 millimeters to 0.0625 millimeters and clay which ranges in diameter from 0.00006 millimeters to .0039 millimeters; and shall not consist of artificially crushed coral as defined by chapter 20.08, Maui County Code. Additional specifications on quality, such as for dune or beach restoration purposes, may be required.

"Sea Level Rise Exposure Area" means the area of projected land loss (erosion) and flooding (high wave and passive) on the date these rules were adopted and as mapped by the department. The sea level rise exposure area will reflect best available science as published in peer-reviewed literature such as the Hawaii Climate Change Mitigation and Adaptation Commission's 2017 Hawaii Sea Level Rise Vulnerability and Adaptation Report, as accessible within the Hawaii Sea Level Rise Viewer hosted by the Pacific Islands Ocean Observing System. The sea level rise exposure area may need to be updated to reflect future updates and reports based on best available science, with such updates being adopted by the Commission.

"Shoreline", as defined in HRS section 205A-1 as amended, 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" as defined in HRS section 205A-41, as amended, means all of the land area between the shoreline and the shoreline setback line, and may include the area between mean sea level and the shoreline, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this

part extends seaward of the shoreline, then "shoreline area" shall include the entire structure.

"Shoreline hardening" means structures that block or significantly inhibit landward movement of the shoreline and are used to protect structures or other features from erosion and other coastal hazards, to include seawalls, revetments, riprap, and bulkheads. Shoreline hardening does not include beach stabilizing structures, such as groins and breakwaters, designed by a professional engineer to stabilize a sandy beach along an eroding shoreline.

"Shoreline processes" means the natural flow of the ocean which affect the movement of the shoreline area or lands bordering the ocean, including submerged lands.

"Shoreline setback line" means that line, as defined in HRS section 205A-41, as amended, running inland from and parallel to the shoreline at a horizontal plane.

"Structural improvement" means any improvement that materially alters load-bearing components essential to the stability of the structure.

"Structure" includes, as defined in HRS section 205A-41, as amended, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

"Valuation" means the cost of an activity, building, or structure as determined by real property valuation by the director of finance, an estimated valuation by an architect, engineer, or contractor licensed by the department of commerce and consumer affairs, State of Hawaii, or the director of public works. In the event of a conflict among the estimates, the higher estimate amount shall be used for the purposes of these rules."

[Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-43, 205A-45, 205A-49; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-22, 205A-41)

**§12-203-5 Severability.** If any provision or part of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be inseverable. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-45, 205A-49; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-22, 205A-41)

4. Section 12-203-6 is amended to read as follows:



**“§12-203-6 Establishment of shoreline setback lines.** (a) All lots shall have a shoreline setback line that is specific to each lot and established as follows:

- (1) Setbacks along shorelines will be established at not less than forty feet inland from the shoreline; and
- (2) For areas where the erosion hazard line is mapped, the shoreline setback line is measured using the same distance used to map the erosion hazard line at the transect or transects applicable to the lot. The shoreline setback shall be mapped by the department. The Department may make non-substantive mapping alignment adjustments as necessary.
  - (A) An applicant may choose to obtain a shoreline certification pursuant to HAR 13-222, in which case the setback line will be established by applying the distance used to map the erosion hazard line from the certified shoreline.
  - (B) For areas where the erosion hazard line is mapped and where a shoreline is accreting or where known geologic information indicates a rock formation that is erosion resistant, as determined by the director, the shoreline setback line shall be established pursuant to 12-203-6(3).
- (3) For areas where there is no mapped erosion hazard line, the shoreline setback line shall be two hundred feet from the shoreline as mapped by the department, except that:
  - (A) If the shoreline is established by a certified shoreline survey, then the shoreline setback line shall be calculated based on the lot’s depth as follows:
    - (i) A lot that is not an irregularly shaped lot and that has an average lot depth of one hundred sixty feet or less shall have a shoreline setback line forty feet from the shoreline;
    - (ii) A lot that is not an irregularly shaped lot and that has an average lot depth of more than one hundred sixty feet shall have a shoreline setback line located at a distance from the shoreline equal to twenty-five percent of the average lot depth, but not more than one hundred fifty feet;
    - (iii) For irregularly shaped lots, the shoreline setback line will be the greater of forty feet or twenty-five percent of the lot’s depth between its front lot line and rear lot lines as measured perpendicularly from the shoreline, to a maximum of one hundred fifty feet from the shoreline.

- (B) In areas where the safe conduct of a certified shoreline survey would be inhibited by cliffs, bluffs, or other topographic features and where the shoreline is fixed by such features, the shoreline setback shall be forty feet as measured from the top of a cliff or bluff, all as determined by the director;
- (C) In areas where the safe conduct of a certified shoreline survey would be inhibited by cliffs, bluffs, or other topographic features and where the shoreline is not fixed by such features, the shoreline setback shall be the greater of forty feet or twenty-five percent of the lot's lot depth between its front lot line and rear lot lines as measured perpendicularly from the shoreline, to a maximum of one hundred fifty feet from the approximate shoreline as mapped by the department.

(b) Notwithstanding any provision of this section to the contrary, any structures and activities not otherwise allowed under these rules may be built and carried out within a lot's minimum buildable depth; provided that, in no case shall such structures and activities be located less than 40 feet from the shoreline.

(c) Prior to commencement of grubbing, grading, or construction activities, the shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii." [Eff 12/26/06; am and comp 08/25/24] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

5. Section 12-203-7 is amended to read as follows:

**“§12-203-7 Request for an amendment to a shoreline setback line established by the erosion hazard line or the approximate shoreline mapped by the department.** (a) A request for an amendment to a shoreline setback line established by the erosion hazard line or the approximate shoreline mapped by the department shall be submitted to the department on a form prescribed by the director and shall be accompanied by applicable information to assist in the consideration of the request, which could include a certified shoreline survey unless determined by the director to be a naturally stable geologic feature that is not eroding; development plans, if any; existing and finish contours; photographs of the shoreline area; written justification addressing compliance with the criteria set forth in these rules; an opinion from a coastal engineer, coastal geologist or similar professional setting forth the reasons an amendment is appropriate for the subject lot; and analysis of

coastal erosion and shoreline processes. The director shall approve, approve with conditions, or deny a request for a shoreline setback line amendment in accordance with these rules. The director shall transmit any request for a shoreline setback line amendment with all relevant information to appropriate agencies for review and comment. Upon consultation with various agencies, the director shall approve or approve with conditions, a request for a shoreline setback line amendment if the director finds that based on clear and convincing evidence the best parcel-specific setback differs from the setback established by the erosion hazard line. The director shall take action on any application for a shoreline setback line amendment within thirty days from the date final agency comments are received and the application is deemed complete by the director.

(b) The director shall notify the commission, at the commission's next regularly scheduled meeting, of any issuance of a shoreline setback amendment, receipt of which shall be acknowledged by the commission. Such notification shall include the name of each applicant, the location and purpose of the development, if any, and the shoreline setback line amendment." [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

6. Section 12-203-8 is amended to read as follows:

**§12-203-8 Determination of the shoreline.** The director may require an applicant to provide a certified shoreline survey for any activity in the shoreline area. The shoreline shall be established and certified in accordance with the procedures prescribed by the board of land and natural resources; provided that, no determination of a shoreline shall be valid for a period longer than the duration established by the board of land and natural resources, except for those portions of the shoreline which are fixed by naturally stable geologic features that are not eroding as determined by the director." [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §205A-42; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-42, 205A-43, 205A-43.6, 205A-45)

7. Section 12-203-9 is amended to read as follows:

**§12-203-9 Development plans.** Unless otherwise required by the director, all development and site plans showing the location of the shoreline and shoreline setback line of a lot shall:

(1) Be drawn to the scale of 1"=20'0";

- (2) Show the shoreline, existing site conditions including human-caused and natural features such as large trees, rock outcroppings, or other known sensitive environmental areas such as special flood hazard area, coastal dune, tsunami zone, erosion hazard line within the parcel, 3.2-foot sea level rise exposure area, wetland, streams, estuary or geologically hazardous land, and existing conditions along properties immediately adjacent to the subject lot; and
- (3) Show contours at a minimum interval of two feet.  
[Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-45)

8. Section 12-203-10 is amended to read as follows:

**“§12-203-10 Structures and activities subject to these rules; exceptions.** All structures and activities located or proposed to be located within the shoreline area including subdivisions shall be subject to these rules and conform to the requirements of this chapter. Other than the following exceptions, the requirements of this chapter shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately inland of the shoreline area shall also be subject to these rules until a certified and confirmed survey map, prepared in accordance with the provisions of section 12-203-8 herein, is filed with the department.

The following actions are not subject to these rules and do not require approval pursuant to section 12-203-13, except that these activities may require implementation of relevant best management practices published by the department. Those who propose any use, activity, or operation pursuant to subsections g, h, i, j, and k below in the shoreline area must complete, and submit to the department before the use, activity or operation is initiated, a declaration form as provided by the department and made accessible to the public, that may establish action-specific Best Management Practices and other appropriate restrictions:

- (a) Transfer of land title; creation or termination of easements, covenants, or other rights in structure or land that do not impair shoreline access;
- (b) Normal and customary agricultural activities on land currently or historically used for such activities, provided that appropriate best management practices to control or minimize pesticide and sediment runoff are implemented to minimize impacts to nearshore waters;
- (c) Changes in uses or operations, including changes between

short-term and long-term occupancy of dwelling units and various uses of beach parks that are under county or state jurisdiction, that do not increase the density or intensity of use as determined by the director. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements pursuant to title 19, Maui County Code or increased storage needs;

- (d) Archaeological, geophysical, percolation, engineering, soils, and other scientific testing conducted by a licensed archaeological or scientific professional involving temporary excavation limited to the minimum extent determined necessary and appropriate or as approved by the State Historic Preservation Division, and employing best management practices protective of the environment and natural and cultural resources;
- (e) Traditional native Hawaiian cultural practices that are conducted or led by native Hawaiian cultural practitioners and that do not negatively impact the shoreline area; this includes protection and stabilization of iwi kupuna using best management practices.
- (f) During the applicable timeframe of a Governor's or Mayor's disaster or emergency declaration or proclamation, while required permits for work that should follow code such as electrical, plumbing, and building permits are obtained and while using best management practices to protect natural and cultural resources:
  - (1) the removal and disposal of disaster debris that does not expand the area of disturbance; emergency structure stabilization and control erosion and runoff;
  - (2) emergency repairs to roofs and windows that do not expand the footprint or use of the habitable structure while required permits are obtained;
  - (3) emergency installation of protective measures to secure habitable structures provided such measures are temporary and do not harden the shoreline.
- (g) Nonstructural interior maintenance, repairs, and renovations to existing, lawfully established structures that involve no expansion, no ground disturbance, and do not increase the density or intensity of use, such as paint, floors, carpets, cabinets, and interior walls and doors, limited to a cumulative valuation of less than \$500,000 in any 24-month period for a single ownership on a single lot or set of lots composing a unified building site, provided a declaration is filed with the department committing to implementing best management

practices required by the department. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements pursuant to title 19, Maui County Code, increased storage needs, or other effects as determined by the director;

- (h) Nonstructural exterior maintenance, repairs, and renovations to existing, lawfully established structures that involve no ground disturbance, such as doors, windows, shutters, siding, roof repairs or replacement and, for structures erected in 1981 or after, to protect against impacts from lead-based paint, painting with related preparatory work, limited to a cumulative valuation of less than \$500,000 in any 24-month period for a single ownership on a single lot or set of lots composing a unified building site, provided a declaration is filed with the department committing to implementing best management practices required by the department;
- (i) Operation and maintenance activities for existing public roadways and drainage systems, subject to approval by the applicable state or county agency, such as vegetation management activities, including tree trimming and cutting and vegetation removal, and clearing obstructions including beach sand accumulations that block publicly- owned drainage ways, provided that beach sand is placed on adjacent beaches or dunes, and the obstruction consists solely of beach sand that is removed to the minimum volume and depth necessary to allow for passage of flood waters, and including roadway pavement patching, repair, restriping and grooving but not including resealing, resurfacing or reconstruction, and provided a declaration is filed with the department committing to implementing best management practices required by the department.
- (j) With the application of best management practices to protect the marine and land environment, emergency protection of water, wastewater or stormwater infrastructure managed by the Department of Water Supply, Department of Environmental Management, or the Department of Public Works when such infrastructure at imminent risk of failure which would substantially affect public health or safety, including significant water loss, or contamination of surface water, land, or water supply, provided a declaration is filed with the department.
- (k) Patching, repairs, and resurfacing of existing driveways and parking lots less than 1,000 square feet provided a declaration is filed with the department committing to implementing best

management practices required by the department. [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-45)

9. Section 12-203-11 is amended to read as follows:

**“§12-203-11 Prohibited activities within the shoreline area.** 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) Where the mining or taking is authorized by a variance pursuant to these rules; or
- (2) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under HRS section 46-11.5; provided that, the sand is removed to the minimum volume and depth necessary to allow for passage of flood waters and shall be placed on adjacent areas unless such placement would result in significant turbidity or would otherwise be detrimental to the shoreline environment; or
- (3) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity or would otherwise be detrimental to the shoreline environment.” [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§46-11.5, 46-12, 205A-43.6, 205A-44, 205A-45)

10. Section 12-203-12 is amended to read as follows:

**“§12-203-12 Allowable structures and activities within the shoreline area.** (a) The following structures and activities may be permitted in the shoreline area subject to the application and approval procedures pursuant to section 12-203-13:

- (1) Existing lawful nonconforming structures or activities.
- (2) A structure or activity that received a shoreline variance or administrative approval from the director prior to the adoption of these rules provided the variance or approval remains valid.
- (3) A structure or activity that is necessary for, or ancillary to,

- continuation of agriculture or aquaculture existing in the shoreline area on June 16, 1989.
- (4) A structure or activity that consists of maintenance, repair, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, and Hawaiian fishponds, and that results in no interference with natural beach processes; provided that the permitted structure may be repaired, but shall not be enlarged within the shoreline area without a variance.
  - (5) Structural and nonstructural repairs (excluding those caused by coastal hazards), renovations, and improvements to a lawful nonconforming structure beyond those allowed pursuant to section 12-203-10, provided that:
    - (A) The structural and nonstructural repairs, renovations or improvements are less than 50 percent of the current replacement cost of the structure over a cumulative ten-year period; or, if the valuation is cumulatively 50 percent or greater within a ten-year period, the work must be authorized by a special management area use permit approved by the commission, regardless of any rule to the contrary.
    - (B) The structural and nonstructural repairs, renovations or improvements do not enlarge or expand the structure or intensifies the structure's use; and
    - (C) The structural and nonstructural repairs, renovations or improvements are permitted by the building code, flood hazard regulations, and special management area law.
  - (6) Structural and nonstructural repairs to, and restoration of, a lawful nonconforming structure beyond those allowed pursuant to sections 12-203-10 and 12-203-12(a)(5), in response to damage by fire, insects, wind, named hurricanes or tsunamis with disaster declaration, accidental means, or other calamity excluding all other coastal hazards, provided that:
    - (A) The structural and nonstructural repairs or restoration are proportional to the damage.
    - (B) The structural and nonstructural repairs, or restoration do not enlarge or expand the structure or intensify the structure's use;
    - (C) The structural and nonstructural repairs or restoration are permitted by the building code, flood hazard regulations, and special management area law; and
    - (D) For the purposes of this subsection, "restoration"



- means returning the structure to its former condition.
- (7) Structural and nonstructural repairs to a lawful nonconforming structure beyond those allowed pursuant to sections 12-203-10, 12-203-12(a)(5) and 12-203-12(a)(6) in a manner that is proportional and directly related to damage by coastal hazards that are chronic or recurring including wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and non-point source pollution, provided that:
- (A) The structural and nonstructural repairs are limited to 10 percent of the current replacement cost of the structure over a cumulative ten-year period. If the cost is cumulatively more than 10 percent, with a maximum of 50 percent of the current replacement cost of the structure within a ten-year period, the work must be authorized by a special management area use permit approved by the commission, regardless of any rule to the contrary;
  - (B) The structural and nonstructural repairs do not enlarge or expand the structure in a way that increases the nonconformity or intensify the structure's use;
  - (C) The structural and nonstructural repairs shall be permitted by the building code, flood hazard regulations, and special management area law;
  - (D) The structural and nonstructural repairs shall be either in the same location, be located mauka or be in an area less vulnerable to coastal hazards;
  - (E) This subsection shall not limit structural and nonstructural repairs to public infrastructure such as waterlines, wastewater lines, drainage systems, warning sirens, and roadways if repairs are necessary to system functionality and relocation or retreat of such infrastructure is not practicable;
  - (F) A coastal hazard mitigation plan, which contains an avoidance alternative, is required to be prepared and submitted as part of the special management area assessment application to conduct structural and nonstructural repairs under this subsection; and
  - (G) The applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Maui harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from coastal natural hazards and coastal erosion.

- (8) A lawfully constructed shoreline hardening structure that protects a habitable structure may be repaired or maintained with like-for-like materials up to 50 percent of the shoreline hardening structure's replacement value over a cumulative ten-year period; otherwise the shoreline hardening structure shall not be repaired and shall be demolished and removed. The applicant shall provide a professionally certified construction estimate to demonstrate the replacement cost of the shoreline hardening structure, along with its size and dimensions, and documentation or evidence of the shoreline hardening structure being lawfully nonconforming. The continued reliance on shoreline hardening structures is not recommended and applicants must provide a coastal hazard mitigation plan, which contains an avoidance alternative, as part of the application. The repairs or maintenance shall not substantially exceed the size, height or density of the original shoreline hardening structure and shall implement BMPs;
- (9) Lawfully constructed shoreline hardening structures that protect a public structure or infrastructure may be repaired or maintained with like-for-like materials up to 50 percent of its replacement value over a cumulative ten-year period; otherwise, the work must be authorized by a special management area permit approved by the commission. The applicant shall provide a professionally certified construction estimate to demonstrate the replacement cost of the structure, along with its size and dimensions, and documentation or evidence of the structure being lawfully nonconforming. The continued reliance on shoreline hardening structures is not recommended and applicants must provide a coastal hazard mitigation plan, which contains an avoidance alternative, as part of the application. The repairs or maintenance shall not substantially exceed the size, height or density of the original structure and shall implement BMPs;
- (10) Qualified demolition;
- (11) Beach-nourishment, dune-restoration, sand-pushing, wetland restoration, fish pond restoration, and coastal revegetation projects approved by all applicable governmental agencies;
- (12) A structure or activity that has been determined by the director to be a minor structure or minor activity within the shoreline area that does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline and which meets the purpose of this chapter, the building

- code, flood hazard regulations, and special management area requirements;
- (13) Adaptation of existing lawful or lawful nonconforming structures in response to their location within sea level rise exposure area, including relocation of a structure mauka of the sea level rise exposure area, and reconfiguration such as reducing the size of a structure, elevating a structure within the existing footprint;
  - (14) Activities that have received a special management area emergency permit pursuant to section 12-202-16 of the special management area rules for the Maui planning commission;
  - (15) Nonstructural single-story enclosures of existing, lawfully established roofed residential lanais, decks, patios, balconies, carports, or similar structures that are accessory to single-family dwellings and multi-family dwellings and that are included in the definition of “floor area” in title 19 of the Maui County Code;
  - (16) Repair, construction, or reconstruction of critical public infrastructure beyond the activities allowed pursuant to section 12-203-10;
  - (17) Utility poles, tsunami sirens built to approved standard specifications, and accessory utility structures along existing utility corridors;
  - (18) Uses and structures established pursuant to section 12-203-6(b);
  - (19) Additions and alterations of structures, or intensification of use that involve only existing lawful structures and uses to which they are subordinate and which are protected for their useful life by being located mauka of public facilities that are protected by shoreline hardening or natural features not subject to erosion, or the director determines that alterations will elevate the entire structure to be adequately protected for its useful life;
  - (20) For areas protected by beach nourishment, new non-habitable, portable structures and uses within forty feet immediately makai of a lot’s minimum buildable depth, that are accessory to lawful structures and uses and that will be protected for their useful life by being located mauka of shorelines protected by beach nourishment;
  - (21) Structures, such as wooden dune walkovers, that will enhance either vertical or lateral public shoreline access provided that they do not adversely affect beach processes, artificially fix the shoreline, or interfere with public access or

- public views to and along the shoreline;
- (22) Exterior installation on and maintenance, repairs, and renovations to existing, lawfully established structures that involve no ground disturbance and that are nonstructural, such as signage, wireless antennae and other transmission equipment, satellite dishes, and roof mounted equipment, such as photovoltaic and solar panels;
  - (23) Patching, repairs, and resurfacing of existing driveways and parking lots greater than 1,000 square feet, including low impact development features as detailed in Hawaii's Low Impact Development Guide or other guidance where appropriate;
  - (24) When associated with an existing lawful structure, site improvements, involving limited ground disturbance, such as installation of turf, shallow landscaping, irrigation, and manual invasive species control that does not use herbicides and does not involve grubbing or earth moving, installation of permeable pavement, and replacement of asphalt or concrete slabs and driveways;
  - (25) When associated with an existing lawful structure, site improvements, involving limited ground disturbance such as the installation, removal, or maintenance of trees and shrubs and landscaping management plan implementation, utility pedestals, ground signs, water, sewer, and conduit lines, walls and fences up to four feet in height, telephone and light poles, mailbox posts, and solar panels, provided that that this does not include new wireless telecommunications towers, windmills and wind turbines;
  - (26) Subdivisions in the shoreline area which ensure proposed development will be placed mauka of the shoreline setback line and allow for a minimum buildable area for all subdivided lots and which provide public shoreline access;
  - (27) Restaurant dining areas that do not exceed a total of 2,000 square feet within the established shoreline setback area per restaurant. Such use shall involve no ground-altering activity; shall not impede the natural movement of the shoreline, dunes, or vegetation; shall not impede public shoreline access or existing walkways; and shall be removed upon imminent threat of erosion, storm impact, or other anticipated hazard or calamity;
  - (28) Conversion of cesspools to centralized, or Department of Health approved, individual wastewater systems where relocation outside of the shoreline setback is not feasible.
- (b) All structures and activities not specifically permitted in this

section are prohibited.

(c) If any new structures that are approved subject to a shoreline setback variance are proposed to be located within the shoreline area, the following restrictions shall apply:

- (1) The applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Maui harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from coastal natural hazards and coastal erosion.
- (2) The construction of shoreline hardening structures or activities shall be prohibited throughout the life of the structure or activity.

The requirements of subsections (c)(1) and (c)(2) and shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court prior to the date of approval of all structures or activities. A copy of the recorded unilateral agreement shall be filed with the director and the director of public works.

(d) Minor structures or activities shall be completed or operating within one year from the later of the date of the department's determination or the date of approval of the last discretionary permit." [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44, 205A-45; MCC Chapter 19.62)

11. Section 12-203-12.1 is added to read as follows:

**“§12-203-12.1 Abandoned structures or structures imminently threatened by erosion.** So that the structure does not become a hazard or threat to the public health, safety or welfare, or to cultural or natural resources, if a structure in the shoreline area is imminently threatened by erosion or abandoned, the property owner must apply for a qualified demolition pursuant to §12-203-12(a)(7) within 180 days of discovery; the property owner must initiate demolition within 180 days of approval and must complete demolition within 180 days of initiation, unless additional time is approved by the director.” [Eff 08/25/24] (Auth: HRS §§205A-2, 205A-43.6, 205A-44, 205A-45; Maui County Charter §§8-8.4, 13-2(15))

12. Section 12-203-13 is amended to read as follows:

**“§12-203-13 Request for approval of structures and activities in the shoreline area.** (a) Other than the exceptions listed in §12-203-10, all proposed structures and activities in the shoreline area shall be

subject to an assessment made by the director.

A request for approval of structures and activities in the shoreline area shall be submitted to the department on a form prescribed by the director and shall be accompanied by applicable information to assist in the assessment, which may include, but not be limited to; a certified shoreline survey; construction plans; a list of proposed plants and their growth at maturation; existing and finish contours; flood zones; topography; proximity to the shoreline; any and all shoreline hardening structures; photographs of the shoreline area; an environmental assessment; written reasons addressing compliance with the criteria set forth in these rules; an analysis of coastal erosion rates and shoreline processes; and an analysis of the impacts to public access to and along the shoreline. If the proposed structure or activity adversely affects public access to or along the shoreline, approval may be conditioned on providing adequate public access. The director shall approve, approve with conditions, or deny such request in accordance with the criteria set forth in these rules, and chapter 12-202 of the special management area rules for the Maui planning commission.

(b) The director shall notify the commission, at the commission's next regularly scheduled meeting, of any application for, or issuance of, approval of structures and activities in the shoreline area, receipt of which shall be acknowledged by the commission. Such notification shall include the name of each applicant and the location." [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44, 205A-45)

13. Section 12-203-14 is amended to read as follows:

**“§12-203-14 Variance application.** (a) A written application for a variance from shoreline setback requirements shall be made in a form prescribed by the director and shall be filed with the director. The application shall include development plans, site plans, photographs, and any other plans, drawings, maps, or information determined by the director to be necessary to evaluate the application. The application shall also include:

- (1) An administrative fee as established in the County budget;
- (2) Certification from the owner or lessee of the lot authorizing the application for variance;
- (3) An environmental assessment or environmental impact statement prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawaii, or a chapter 343 exemption

determination;

- (4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity, or operation is to occur;
- (5) A development plan and site plan of the shoreline area, drawn to scale;
- (6) A copy of the certified shoreline survey of the property;
- (7) Detailed justification of the proposed project that addresses the purpose and intent of these rules and the criteria for approval of a variance;
- (8) Analysis of historical and anticipated coastal erosion and coastal processes related to the subject property; and
- (9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS chapter 205A, part III, and this chapter, the director shall submit the application to the commission. If the application is determined to be incomplete by the director, the director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The director shall submit a written report, and all relevant documents and information to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property that abuts or is adjacent to the parcel that is the subject of the application. Not less than thirty days prior to the public hearing date, the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law." [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-43.5, 205A-46, 343-5; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.5, 205A-46, 343-5)

14. Section 12-203-15 is amended to read as follows:

**“§12-203-15 Criteria for approval of a variance.** (a) A variance may be granted for a structure or activity otherwise prohibited by this chapter, if the commission finds in writing, based on the record presented,

that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
  - (2) Aquaculture;
  - (3) Landscaping; provided that, the commission 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 HRS chapter 269;
  - (7) Private facilities or improvements that are clearly in the public interest;
  - (8) Private facilities or improvements that will not adversely affect beach processes, result in flanking shoreline erosion, nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
  - (9) Private facilities or improvements that may artificially fix the shoreline; provided that, the commission finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; and provided further that, the commission imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest, and provided that that the improvements or facilities shall not be in areas with sand beaches or where artificially fixing the shoreline may interfere with existing recreational or waterline activities unless it is clearly in the public interest; or
  - (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that, the commission also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of the public beach, and will be necessary to stabilize an eroding shoreline.
- (b) A structure or activity may be granted a variance upon grounds of hardship if:
- (1) The applicant would be deprived of reasonable use of the land if required to fully comply with the shoreline rules;
  - (2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline rules; and
  - (3) The proposal is the practicable alternative that best conforms to the purpose of these rules.



(c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions, and the geography of the lot.

(d) For purposes of this section, hardship shall not include: economic hardship to the applicant; County zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; any other permit or approval that may have been issued by the commission. If the hardship is a result of actions by the applicant, such result shall not be considered a hardship for purposes of this section.

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

- (1) To maintain and require safe lateral access to and along the shoreline for public use 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 or rubble on public property;
- (4) To minimize adverse impacts on public views to, from, and along the shoreline. For purposes of this section only, "adversely impacts public views" means the adverse impact on public views and open space resources caused by new building structures exceeding a one-story or 30-foot height limitation; and
- (5) To comply with chapters 19.62 and 20.08, Maui County Code, relating to flood hazard districts and erosion and sedimentation control respectively.

(f) Notwithstanding any provision of this section to the contrary, the commission may consider granting a variance for the protection of a legal structure or public infrastructure; provided that, the structure is at risk of damage from coastal erosion, poses a danger to the health, safety and welfare of the public, and is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(g) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of section 12-202-17 of the special management area rules of the Maui planning commission." [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §205A-43.5, 205A-46; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.5, 205A-46; MCC Chapters 19.62, 20.08)

15. Section 12-203-16 is amended to read as follows:

**“§12-203-16 Enforcement.** (a) The director shall enforce these rules in accordance with HRS chapter 205A.

(b) Any use, activity, construction, or operation pursuant to these rules and chapter 205A, HRS, as amended, that requires and fails to obtain shoreline approval or a variance, or has failed to comply with conditions established with any such approval, is a violation of these rules and chapter 205A, HRS. The violation shall be corrected by requiring the owner or violator to pay all applicable fines and take the following corrective actions:

- (1) Cease any unpermitted use, activity, or operation;
- (2) Remove, with appropriate permits, any unpermitted construction;
- (3) Obtain a shoreline approval or variance; or
- (4) Other means determined by the director have been achieved. Applicable fines shall accrue until the violation is corrected. No other permit or approval shall be construed as shoreline approval pursuant to this part.

(c) If a portion of a constructed structure is situated within the shoreline area, and the structure has not been authorized with government agency permits required by law, then for purposes of enforcement of this part, the entire structure shall be construed to be entirely within the shoreline area and shall be subject to enforcement accordingly.

(d) Issuance of notice of violation and order.

- (1) The owner shall, and the alleged violator may, be notified by the enforcement agency of an alleged violation of these rules and any approval, variance, or condition issued pursuant thereto. The director shall provide service by at least one of the following methods: certified or registered mail, regular mail with delivery confirmation, or personal service. If, after a reasonable effort has been made at least twice and is documented, and the owner and alleged violator have not been served, the director may provide service by posting on the property or by publishing the notice once per week for three consecutive weeks in a newspaper that is printed and issued at least twice weekly in the County and is generally circulated through the County. The date of service shall be the date on which the certified or registered mail is accepted, the date of regular mail delivery confirmation, the date of personal service, the date of posting on the property, or the date of the last publication in the newspaper.
- (2) The notice of violation and order shall include the specific

section of these rules that has been violated; the nature of the violation; and the remedy required or available, including cessation or removal of the violation, subject to applicable permitting requirements; that an initial civil fine be paid not to exceed \$100,000 per violation; that a civil fine be paid not to exceed \$10,000 per day for each day in which the violation persists, unless otherwise required or allowed by statute, in addition to the foregoing and any other penalties; and that the landowner or violator may appeal the notice of violation pursuant to section 12-203-18 within thirty days of the date of service. The filing of an appeal shall not correct or suspend any violation or stay the assessment and accumulation of fines. The following and other applicable and reasonable criteria shall be considered in assessing the initial and daily fines:

- (A) Previous violations by the same person;
  - (B) The degree of damage to the environment, including damage to the shoreline and marine resources;
  - (C) The degree of cooperation provided by the violator during the investigation;
  - (D) Amount necessary to deter future violations;
  - (E) Evidence of circumstances beyond the control of the violator;
  - (F) Whether the owner or violator knew or should have known that assessments or approvals were required; and
  - (G) The amount of time and resources required by the department to investigate and determine that a violation occurred.
  - (H) Whether the owner or violator has financially benefitted from the unpermitted use, activity or structure.
- (3) The department, in consultation with the department of the corporation counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.
- (4) Nothing in this section shall prohibit the department, through the corporation counsel, from filing an order or motion directly with a court in the event that public health, safety and welfare may be at risk.
- (5) Appeals of violations shall be processed pursuant to subchapter 8 of the Commission's Rules of Practice and Procedure. [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §205A-43.6; Maui County Charter §§8-8.4, 13-2(15))

(Imp: HRS §205A-43.6)

16. Section 12-203-18 is amended to read as follows:

**“§12-203-18 Appeal of director’s decision; filing the notice of appeal.** (a) Appeals of violations shall be processed pursuant to Subchapter 8 of the Commission's Rules of Practice and Procedure. Appeal of the director’s decision including, but not limited to, the validity of the erosion hazard line, and the determination of minor structures or activities, may be made to the commission by the filing of a notice of appeal with the department not later than 10 days after the receipt of the director’s written decision or, where the director’s decision is not required by the commission or these rules to be served upon appellant, not later than 10 days after the meeting at which the commission received notification of the director’s decision. The notice of appeal shall be filed in accordance with section 12-201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission’s next regularly scheduled meeting, of the filing of the notice of appeal.

(b) For decisions other than enforcement proceedings pursuant to section 12-203-16, appeal of the director’s decision may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director’s written decision, or, where the director’s decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director’s decision. For enforcement proceedings pursuant to section 12-203-16, appeal of a notice of violation may be made to the commission by the filing of a notice of appeal with the department within thirty days of the date of service. The notice of appeal shall be filed in accordance with section 12- 201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission’s next regularly scheduled meeting, of the filing of the notice of appeal.

(c) The director and the owner, violator or Appellant may negotiate a resolution to the violation, other dispute or appeal.

(d) The director and the owner, violator or Appellant may agree on a resolution that includes a reduction of any accumulated fines and correction of the violation, if applicable. If the resolution reduces the accumulated fines by \$50,000 or less, then the director will notify the owner or violator in writing and establish which party shall draft the agreement. At the commission’s next regularly scheduled meeting, the director shall notify the commission of the agreement, receipt of which shall be acknowledged by the commission.

(e) If the director and the owner or violator agree on a resolution that reduces the accumulated fines by more than \$50,000, then the director will notify the owner or violator in writing and establish which party shall draft the agreement. The agreement shall be submitted to the commission for final action. The commission may accept, accept with modifications, or reject the agreement.” [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

17. Section 12-203-23 is amended to read as follows:

**“§12-203-23 Contested case hearing on appeal.** The commission shall hold a contested case hearing on the appeal. The director, the appellant, and, where the appellant is someone other than the applicant, the applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of chapter 12-201 of the rules of practice and procedure for the Maui planning commission, relating to petitions to intervene, contested case procedures, and post-hearing procedures, respectively, shall govern the proceedings, except that petitions to intervene on an appeal shall be filed with the commission no later than ten days after the meeting at which the commission received notification of the filing of an appeal.” [Eff 11/27/03; am and comp 08/25/24] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

18. Material to be repealed is bracketed. New material is underscored. In printing these rules, the department need not include the brackets, the bracketed material, or the underscoring.

19. These rules shall take effect 30 days after filing with the Office of the County Clerk. Applications submitted prior to the effective date shall be processed in accordance with the rules in effect at the time the application was submitted.

**City and County of Honolulu, Ordinance No. 14-9 Relating to Flood Hazard Areas**

ROH Chapter 21A Flood Hazard Areas



**A BILL FOR AN ORDINANCE**

RELATING TO FLOOD HAZARD AREAS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and intent. The purpose of this ordinance is to repeal the flood hazard district provisions under the Land Use Ordinance, Chapter 21, Revised Ordinances of Honolulu 1990, as amended, and adopt new flood hazard regulations which fully conform to current language in the National Flood Insurance Program (NFIP) regulations under its own chapter in the Revised Ordinances of Honolulu. The NFIP requires participating communities to adopt and maintain adequate floodplain management regulations consistent with the minimum standards of the NFIP in order to maintain eligibility in the program. The adoption of the new ordinance is essential to prevent a potential suspension from the NFIP, prevent the denial of federal financial assistance for acquisition and construction purposes, and preclude jeopardizing the making, securing, extension, and renewal of real estate loans by lending institutions regulated by the federal government.

SECTION 2. Chapter 21, Article 9, Revised Ordinances of Honolulu 1990, as amended, is amended by repealing Section 21-9.10 ("Flood hazard districts") and accompanying Sections 21-9.10-1 to 21-9.10-14, inclusive.

SECTION 3. Chapter 21, Article 9, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-9.10 to read as follows:

**"Sec. 21-9.10      Developments in flood hazard areas.**

- (a) All permit applications subject to this chapter shall, at the time of processing, be reviewed for compliance with the flood hazard areas ordinance. Whenever applicable, the flood hazard area requirements of a development project shall be determined prior to processing for other approvals mandated by other laws and regulations.
- (b) Dwellings in country, residential and agricultural districts, as well as detached dwellings and duplex units in apartment and apartment mixed use districts, may exceed the maximum height in the district by no more than five feet if required to have its lowest floor elevated to or above the base flood elevation, provided such additional height shall not be greater than 25 feet above the base flood elevation.
- (c) Notwithstanding any other provision to the contrary, no more than two dwelling units shall be permitted on a single zoning lot whose only buildable area is in the



**A BILL FOR AN ORDINANCE**

floodway. This provision, designed to reduce flood losses, shall take precedence over any less restrictive, conflicting laws, ordinances or regulations."

SECTION 4. Section 21-10.1, Revised Ordinances of Honolulu 1990, as amended ("Definitions"), is amended by amending the definition of "Basement" to read as follows:

""Basement" means a floor which is wholly below grade, or which is partly below grade such that the floor above is no more than three feet above grade for at least 50 percent of the floor's perimeter. [For the purpose of the flood hazard district regulations of Article 9, "basement" shall be as defined in Section 59.1 of Title 44 of the Code of Federal Regulations: the National Flood Insurance Program and Related Regulations.]

Grade shall be either existing or finish grade, whichever is lower at all points (see Figure 21-10.2)."

SECTION 5. Section 21-10.1, Revised Ordinances of Honolulu 1990, as amended ("Definitions"), is amended by deleting the definitions of "Coastal high hazard district"; "'Flood' or 'flooding'"; "Flood elevation"; "Flood fringe"; "Flood fringe district"; "Flood hazard districts"; "Flood hazard variance"; "Floodplain"; "Floodproof"; "Floodway"; "Floodway district"; "General floodplain district"; and "Regulatory flood."

SECTION 6. The Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new chapter to be appropriately designated by the revisor of ordinances and to read as follows:

**"Chapter \_\_**

**FLOOD HAZARD AREAS**

**Article 1. General Provisions**

**Sec. \_\_-1.1 Purpose.**

- (a) Within the City and County of Honolulu, certain areas are subject to periodic inundation by flooding or tsunami or both, resulting in loss of life and property, creation of health and safety hazards, disruption of commerce and governmental services as well as extraordinary public expenditures for flood and tsunami protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.





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## A BILL FOR AN ORDINANCE

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- (b) These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to flood losses.
- (c) Congress has determined that regulation of construction in areas subject to flood hazards is necessary for the protection of life and property and reduction of public costs for flood control, rescue and relief efforts, thereby promoting the safety, health, convenience and general welfare of the community. In order to achieve these purposes, this chapter establishes flood hazard areas and imposes restrictions upon manmade changes to improved and unimproved real estate within the areas. These restrictions are necessary to qualify the City and County of Honolulu for participation in the federal flood insurance program.
- (d) Failure to participate in the program would result in the denial of federal financial assistance for acquisition and construction purposes, and would jeopardize the making, securing, extension, and renewal of loans secured by improved real estate by lending institutions regulated by the federal government.
- (e) This chapter is designed to:
  - (1) Protect human life and health and promote the general welfare;
  - (2) Minimize expenditure of public money for costly flood control projects;
  - (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - (4) Minimize prolonged business interruptions;
  - (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
  - (6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
  - (7) Ensure that potential buyers are notified that property is in an area of special flood hazard; and



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- (8) Ensure that those who occupy and/or develop the areas of special flood hazard assume responsibility for their actions.

**Sec. \_\_-1.2 Statutory authority.**

This chapter is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (Public Laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended, and Chapter 46, Hawaii Revised Statutes.

**Sec. \_\_-1.3 Administration.**

- (a) Designation of floodplain administrator. The director of planning and permitting is hereby appointed to administer, implement, and enforce this chapter by granting or denying development permits in accordance with its provisions.
- (b) Duties and responsibilities shall include, but not be limited to the following:
  - (1) Review all development permits to determine that the requirements of this chapter have been satisfied, the project site is reasonably safe from flooding, and other required federal or state approvals are obtained.
  - (2) Where base flood elevation data have not been provided on the federal flood insurance rate maps, the director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer this chapter.
  - (3) Whenever a watercourse is proposed to be altered or relocated, require that the flood carrying capacity within the altered or relocated watercourse be maintained.
  - (4) Obtain and maintain for public inspection, certifications and documentation required by this chapter, including a record of all variance actions.
  - (5) Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions.
  - (6) Take action to remedy violations of this chapter.



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- (c) Appeals. This chapter is a zoning ordinance and appeals from the actions of the director in the administration of this chapter shall be to the zoning board of appeals as provided by Section 6-1516 of the charter. Appeals shall be filed within 30 days of the date of mailing or personal service of the director's written decision.
- (d) Enforcement. If the director determines that there is a violation of any provision of this chapter or any permit issued pursuant thereto, the violator shall be subject to the code enforcement rules of the department.
- (e) Warning and disclaimer of liability.
  - (1) The degree of flood and tsunami protection required by this chapter is considered reasonable for regulatory purposes and is based on standard engineering methods of study. Larger floods or tsunamis than the base flood as designated on the flood maps, may occur on occasions, or flood or tsunami elevations may be increased by manmade or natural causes. This chapter does not imply that areas outside the flood hazard area will be free from flooding or damage.
  - (2) This chapter shall not create liability on the part of the city or any officer, official, or employee for any flood or tsunami damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.
- (f) Other laws and regulations. All construction and improvements subject to this chapter shall comply with federal, state and other applicable city laws and regulations including, but not limited to, the zoning, building, housing, plumbing and electrical codes, and grading ordinances. This chapter, designed to reduce flood losses shall take precedence over any less restrictive, conflicting laws, ordinances or regulations.
- (g) No exemptions. Neither the city nor any agency, department, or division under its control shall be exempted from compliance with the provisions of this chapter.
- (h) Severability. This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.



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### Sec. \_\_-1.4 Definitions.

Definitions contained in regulations governing the National Flood Insurance Program, 44 CFR 59 through 77, as amended, are incorporated by reference and made a part of this chapter as though set forth fully herein. Where terms are not defined in this chapter, they shall have their ordinary accepted meanings within the context in which they are used. The following words and terms used herein are only applicable to this chapter and are defined as follows:

"Architect" means a person who has a license to practice architecture in the State of Hawaii.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood").

"Base flood elevation" means the water surface elevation of the base flood.

"Basement" means any area of a building having its floor below ground level on all sides.

"Breakaway wall" means any type of wall, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material, that is not part of the structural support of a building and which is designed to break away without damaging the structural integrity of the building or other buildings to which it might be carried by floodwaters.

"Coastal high hazard area" means a special flood hazard area subject to high velocity wave action from storms or seismic sources and designated on the flood insurance rate map as zone VE or V.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Director" means the director of planning and permitting, City and County of Honolulu, or the director's authorized representative.

"Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, walls, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.



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"Engineer" means a person who is licensed to practice civil or structural engineering in the State of Hawaii.

"FEMA" means Federal Emergency Management Agency.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, resulting from any source, such as tsunamis, or the unusual and rapid accumulation of runoff of surface waters or mud from any source.

"Flood fringe area" means a special flood hazard area consisting of the area of the flood fringe designated on the flood insurance rate map as zone AE, AO and AH.

"Flood insurance rate map" or "FIRM" means the map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"Flood insurance study" means the report provided by the Federal Emergency Management Agency that includes flood profiles, the flood insurance rate map, the flood hazard boundary map, and the water surface elevation of the base flood.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures and properties that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

"Floodway" means the channel or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway area" or "AEF" means a special flood hazard area consisting of the portion of zone AE designated on the flood insurance rate map as a floodway.

"Floodway permit" means a permit required under this chapter for a structure within the floodway area.

"Fraud and victimization," as related to Section \_\_-1.12, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the city will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are



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subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

"General floodplain" means a special flood hazard area for which detailed engineering studies were not performed by FEMA to determine the base flood elevations or to identify the floodway, and is identified as zone A on the flood insurance rate map.

"Hardship," as related to Section \_\_-1.12, means the exceptional hardship that would result from a failure to grant the requested variance. The city requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means a structure that is: (a) listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places pursuant to a historic preservation program approved by the Secretary of Interior; or (d) individually listed on a local inventory of historic places pursuant to a historic preservation program certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary.



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"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not modified so as to render the use in violation of the elevation design requirement of this chapter.

"Manufactured home" means a structure (other than a recreational vehicle), transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities.

"Mean sea level" means the national geodetic vertical datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance, as amended, and includes any subsequent improvements to such structures.

"Public safety and nuisance," as related to Section \_\_\_-1.12, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Repetitive loss structure" means a structure that was damaged by flood two or more times within any ten-year period, where the cost of fully repairing the flood damage to the structure, on average, equaled or exceeded twenty-five percent of its market value at the time of each flood.

"Special flood hazard area" or "SFHA" means an area having special flood or flood-related erosion hazards, and shown on a FIRM as zone A, AO, AE, AEF, AH, VE or V.



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"Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, and a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent of the market value of the structure (excluding land) before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or series of reconstruction, rehabilitation, or additions, or other proposed new development of a structure or repetitive loss structure, in any five-year period, the cumulative cost of which equals or exceeds fifty percent of the market value of the structure (excluding land) before the "start of construction" of the first improvement during that five-year period. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term also includes the relocation of a structure even if the cost of improvements associated with the relocation does not equal or exceed fifty percent of the market value of the structure. An improvement shall constitute a substantial improvement only if:

- (a) The structure was constructed on or before September 3, 1980;





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- (b) The structure was constructed after September 3, 1980, and was not within a special flood hazard area at the time of the issuance of the building permit;
- (c) The structure was constructed after September 3, 1980, and was the subject of a map change that resulted in higher base flood elevations; or
- (d) The structure was constructed after September 3, 1980, and was the subject of a map change that resulted in a FIRM zone change.

The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or county health, sanitary, or safety specifications; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Surveyor" means a person who is licensed to practice surveying in the State of Hawaii.

"Violation" means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without a required elevation certificate, other certification, or other evidence of compliance with this chapter shall be presumed to be in violation until such time as the required certificate or other evidence of compliance is provided.

"Watercourse" means a stream, wash, channel, or other topographic feature on or over which waters flow at least periodically.

"Water surface elevation" means the height, in relation to the national geodetic vertical datum (NGVD) of 1929 (or other datum, where specific), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Zoning lot" means a zoning lot as defined by the land use ordinance, Chapter 21, Revised Ordinances of Honolulu 1990, as amended.

**Sec. \_\_-1.5 Special flood hazard areas.**

- (a) Applicability.



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This chapter shall apply to all lands within the special flood hazard areas as determined by the director or as delineated on the flood insurance rate maps (FIRM) prepared by the FEMA, or both. The following special flood hazard areas are established:

- (1) Floodway area (Floodway in zone AE).
  - (2) Flood fringe area (zones AE, AO, AH).
  - (3) Coastal high hazard area (zone VE, V).
  - (4) General floodplain area (zone A).
- (b) Adoption of federal flood maps and reports. The special flood hazard areas identified by the FEMA in the flood insurance rate maps and flood insurance study dated January 19, 2011, and any subsequent revisions and amendments (hereinafter called "flood maps") are hereby adopted and declared to be part of this chapter. The flood maps are on file at the City and County of Honolulu Department of Planning and Permitting, 650 S. King Street, Honolulu, Hawaii 96813.
- (c) The flood hazard areas and base flood elevations shall be determined by the flood maps. Where interpretation is needed as to whether or not a project lies within a certain flood hazard area, or interpretation is needed on the base flood elevation in the floodway, flood fringe or coastal high hazard areas, a request for interpretation of the flood maps shall be submitted to the director for determination. The request shall include the project site and location plan, property lines and dimensions and tax map key.
- (d) Where flood hazard areas and base flood elevations have not been determined on the flood maps, the director shall obtain and review the information needed to make this determination. A request for interpretation under this section shall be submitted to the director and include three sets of documents, stamped and signed by a licensed professional engineer, containing adequate information and substantiating data consistent with this part, such as flood study, flood data, project site and location plan, property lines and dimension, tax map key, and topographic data, contours or spot elevations based on reference marks on flood maps. Upon initial review by the director, other related information may be subsequently required to evaluate the request.



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- (e) Flood map revisions. Whenever base flood elevations may change due to a proposed development, the applicant shall obtain a conditional letter of map revision from the FEMA before the approval or issuance of any development permit. A letter of map revision shall be obtained from the FEMA whenever a development has changed the base flood elevation within any special flood hazard area. An application for a letter of map revision shall be submitted to the FEMA no later than six months after the completion of a development.

**Sec. \_\_\_-1.6            General development standards.**

Structures within the special flood hazard areas shall conform to the following:

- (a) Be designed and adequately anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including effects from buoyancy caused by the base flood.
- (b) Constructed of flood-resistant materials.
- (c) Constructed by methods and practices that minimize flood damage.
- (d) Constructed with electrical, heating, ventilation, plumbing, air conditioning, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (e) Provided with adequate drainage to minimize damage in accordance with the storm drainage standards of the department.
- (f) For new or replacement potable water system and facilities, be designed to minimize or eliminate infiltration of flood waters into the systems.
- (g) For new or replacement sanitary sewer system and waste disposal system, be designed, located and constructed so as to minimize impairment to them or contamination from them during and subsequent to flooding by the base flood.
- (h) **Manufactured Homes.** Manufactured homes that are placed or substantially improved within special flood hazard areas that are not coastal high hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to, or above, the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Manufactured homes that are placed



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or substantially improved within coastal high hazard areas shall meet the requirements of Section \_\_\_-1.9.

- (i) **Recreational Vehicles.** Recreational vehicles placed within a special flood hazard area shall either:
  - (1) Be on site for fewer than thirty consecutive days;
  - (2) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by a quick disconnect type utilities and security device, and has no permanently attached additions); or
  - (3) Meet the requirements for manufactured homes under subsection (h) of this section.
- (j) A structure that straddles two or more special flood hazard areas shall comply with the standards of the flood hazard area that is considered to have the most stringent or restrictive standards.

**Sec. \_\_\_-1.7      Floodway area.**

The floodway identified on the flood maps and located within areas of special flood hazard is the watercourse reserved to discharge the base flood. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which could carry debris, and erosion potential, the following provisions shall apply:

- (a) A floodway permit shall be obtained from the director before approval or issuance of any other permits for structures within the floodway area.
- (b) A restrictive covenant shall be inserted in the deeds and other conveyance documents of the property and recorded or filed with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate, providing that a permit has been granted to a property located in a floodway area that is subject to flooding and flood damage, increases risks to life and property, and the property owners shall not file any lawsuit, action or claim against the city for costs or damages, and shall indemnify and save harmless the city from any liability when such loss, damage, injury or death results due to the permit and the flooding of the property. Upon approval of the floodway permit, such covenant shall be fully executed and recorded. Proof of recordation shall be submitted to the director prior to issuance of any building permits.



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- (c) Any temporary or permanent encroachment, including fill, structures, storage of material or equipment, or other development within the floodway, shall not be approved unless certification and supporting data, including hydrologic and hydraulic analyses performed in accordance with standard engineering practice, are provided by a licensed engineer demonstrating that the proposed encroachment will not cause any increase in base flood elevations during the occurrence of the base flood.
- (d) Proposed structures in the floodway area shall additionally comply with the general development standards and flood fringe area provisions of this chapter.
- (e) No more than two dwelling units shall be permitted on a single zoning lot whose only buildable area is in the floodway.
- (f) Within an area designated AE without a floodway on the flood maps, until a floodway is designated, no new construction, substantial improvement, or other development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point.

**Sec. \_\_\_-1.8 Flood fringe area.**

In addition to the general development standards, the following standards shall be applicable in the flood fringe area:

- (a) In areas designated on the flood maps as zone AE or AH:
  - (1) All new construction or substantial improvements of residential structures shall have the lowest floor, including basements, elevated to or above the base flood elevation.
  - (2) All new construction or substantial improvements of nonresidential structures shall have the lowest floor elevated to or above the base flood elevation; or together with attendant utility and sanitary facilities, be designed and constructed so that below the base flood elevation, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy due to the base flood.



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- (3) Within zone AH, adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.
- (b) In areas of shallow flooding designated on the flood maps as zone AO:
- (1) All new construction or substantial improvements of residential structures shall have the lowest floor including basements, elevated above the highest adjacent grade at least as high as the depth number specified on the flood maps.
- (2) All new construction or substantial improvements of nonresidential structures shall have the lowest floor elevated above the highest adjacent grade at least as high as the depth number specified on the flood maps; or together with attendant utility and sanitary facilities, be designed and constructed so that below that level, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (3) Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.
- (c) All new construction or substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must meet the following minimum criteria:
- (1) For non-engineered openings:
- (A) Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
- (B) The bottom of all openings shall be no higher than one foot above internal or external grade whichever is highest;



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- (C) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and
  - (D) Buildings with more than one enclosed area must have openings on exterior walls for each area to allow floodwater directly enter; or
- (2) Be certified by a licensed engineer or architect.
- (d) A licensed professional architect or engineer shall develop or review the design, specifications and plans and certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this chapter, and include the elevation to which such structures are floodproofed.

**Sec. \_\_-1.9 Coastal high hazard area.**

In addition to the general development standards, the following standards shall be applicable in the coastal high hazard area:

- (a) (1) All new construction or substantial improvements of residential and nonresidential structures shall be elevated on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation.
  - (2) Piles or column foundations and structures attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year.
- (b) (1) All new construction or substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the structure or supporting foundation.
- (2) Such enclosed space shall not be used for human habitation and shall be used solely for parking of vehicles, building access or storage.



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- (3) A breakaway wall shall have a design-safe loading resistance of not less than 10 and not more than 20 pounds per square foot, or a licensed architect or engineer shall certify that the breakaway wall shall collapse from a water load less than that which would occur during the base flood.
  
- (c) The use of fill for structural support of buildings shall be prohibited.
  
- (d) All new development shall be constructed landward of the reach of the mean high tide.
  
- (e) Human alterations of sand dunes and native mangrove stands which would increase potential flood damage shall be prohibited.
  
- (f) A licensed architect or engineer shall develop or review the design, specifications and plans and certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this chapter, and that any development in the coastal high hazard area, including structures and improvements, would not affect the base flood nor aggravate existing flood-related erosion hazards.

**Sec. \_\_-1.10      General floodplain.**

- (a) All proposed development within the general floodplain (unnumbered zone A) shall be subject to review and approval of the director. The developer shall provide information signed and stamped by a licensed engineer, to evaluate the flooding and to determine the base flood elevation, and whether the project site is located within a floodway or flood fringe area, under the provisions of Section \_\_-1.5(d).
  
- (b) The director in reviewing the application may consult with other city, state and federal agencies for their comments and recommendations, and shall review the related flood data such as flood elevation, riverine flood velocities, boundaries, etc., and evaluate and determine whether the proposed project is located within a floodway or flood fringe area.
  
- (c) If it is determined that the proposed project is within a floodway area, the project shall comply with the standards and provisions of Section \_\_-1.7. If it is determined that the proposed project is within a flood fringe area, it shall comply with the provisions and standards of Section \_\_-1.8. Until a floodway or flood fringe area is designated, no development shall be allowed that would increase the water surface elevation of the base flood more than one foot at any point.





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**Sec. \_\_\_-1.11      Developments adjacent to watercourse outside the flood hazard area.**

- (a) Applications for building permits for development projects located on property encompassing or adjacent to a property with a watercourse outside of the special flood hazard areas identified on the federal flood maps, shall be subject to review and approval of the director. The application shall include information signed and stamped by a licensed engineer, to evaluate the potential flooding of the area.
- (b) The director in reviewing the application may consult with other city, state and federal agencies for their comments and recommendations. If it is determined that the proposed project is within a floodway area, the project shall comply with the provisions and standards of Section \_\_\_-1.7. If it is determined that the proposed project is within a flood fringe area, the project shall comply with the provisions and standards for Section \_\_\_-1.8.
- (c) No watercourse shall be modified, constructed, lined or altered in any way unless approved by the director.

**Sec. \_\_\_-1.12      Flood Variance**

- (a) The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

This chapter is designed to help protect the community from flood loss and damage. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided



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in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

- (b) The following may be permitted as a variance from this chapter subject to review and approval of the director:
- (1) New construction or substantial improvement of structures, and other proposed new development to be erected on a lot of one-half acre or less in area, contiguous to and surrounded by lots with existing structures constructed below the base flood elevation.
  - (2) Repair or rehabilitation of historic structures upon a determination that the proposed reconstruction or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
  - (3) Improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by a code enforcement official and which are the minimum necessary to assure safe living conditions.
  - (4) New construction or substantial improvement of structures, and other proposed new development necessary for the conduct of a functionally dependent use.
  - (5) New construction or substantial improvement of public beach park facilities.
- (c) The application shall be submitted to the director and signed and stamped by a licensed architect and engineer, and shall include three sets of documents with the following information as may be applicable:
- (1) Plans and specifications showing the site and location; dimensions of all property lines and topographic survey of the zoning lot; existing and proposed structures and improvements, fill, and storage areas; location and elevations of existing and proposed streets and utilities; floodproofing measures; relationship of the site to the location of the flood boundary; and the existing and proposed flood control measures and improvements.



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## A BILL FOR AN ORDINANCE

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- (2) Cross sections and profiles of the area and the base flood elevations and profile referenced to the national geodetic vertical datum (NGVD) of 1929.
- (3) Flood study and drainage report data.
- (4) Description of surrounding properties and existing structures and uses, and the effect the variance may have on them and the base flood.
- (5) Justification and reasons for the variance in relationship to the intent and provisions of this section, with information as may be applicable on the following:
  - (A) The danger to life and property, including surrounding properties due to increased flood elevations or velocities caused by the variance.
  - (B) The danger that materials may be swept onto other lands or downstream to the injury of others.
  - (C) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
  - (D) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
  - (E) The importance of the services provided by the proposed facility to the community.
  - (F) The availability of alternative locations not subject to flooding for the proposed use.
  - (G) The compatibility of the proposed use with existing and anticipated development.
  - (H) The relationship of the proposed use to the floodplain management program for the area.
  - (I) The safety of access to the property in times of flood for ordinary and emergency vehicles.



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## A BILL FOR AN ORDINANCE

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- (J) The expected elevations and velocity of the base flood at the site due to the variance.
  - (K) That failure to grant the variance would result in exceptional hardship to the applicant.
  - (L) That the variance will not result in increased base flood elevations, additional threat to surrounding properties and to public safety, extraordinary public expense, create a nuisance, cause fraud and victimization of the public or conflict with other laws or regulations.
- (6) A restrictive covenant which shall be inserted in the deeds and other conveyance documents of the property and recorded or filed with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate, providing that a flood variance has been granted to a property located in a special flood hazard area that is subject to flooding and flood damage, that a variance for a structure with its lowest floor below the base flood elevation increases risks to life and property, and that the property owners shall not file any lawsuit, action or claim against the city for costs or damages, and shall indemnify and save harmless the city from any liability when such loss, damage, injury or death results due to the flood variance and the flooding of the property. Upon approval of the flood variance, such covenant shall be fully executed and recorded. Proof of recordation shall be submitted to the director prior to issuance of any building permits.
- (7) Such other factors which are relevant to the purposes of this section.
- (d) The director in reviewing the variance may consult with other city, state and federal agencies for their comments and recommendations. A flood variance may be granted only upon a:
- (1) Showing of good and sufficient cause;
  - (2) Determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - (3) Determination that the granting of a variance will not result in increased flood elevations, additional threat to public safety, extraordinary public expense, create a nuisance, cause fraud and victimization of the public, or conflict with other laws or regulations; and



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## A BILL FOR AN ORDINANCE

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- (4) Determination that a variance granted within a floodway area would not result in any increase of the base flood elevation.
- (e) The director may approve, approve with conditions or deny the variance. Such conditions may include but not be limited to:
  - (1) Modification of the project, including the sewer and water supply facilities.
  - (2) Limitations on periods of use and operation.
  - (3) Imposition of operational controls, sureties and deed restrictions.
  - (4) Requirements for construction of channels, dikes, levees and other flood-protective measures.
  - (5) Floodproofing measures designed consistent with the base flood elevation, flood velocities, hydrostatic and hydrodynamic forces and other factors associated with the base flood.
  - (6) Other conditions as may be deemed necessary by the director to further the purposes of this chapter.

### **Sec. \_\_-1.13      Substantial Improvements.**

All structures proposed to be substantially improved must be brought into compliance with the standards and provisions of this chapter. For the purpose of determining substantial improvement, the market value of a structure and the cost of the proposed improvements to the structure shall be provided by the applicant from the following sources:

- (a) Itemized estimates made by an independent professional construction estimator;
- (b) Appraisals prepared by a independent licensed appraiser;
- (c) Calculations based on square foot cost factors published in building cost estimating guides recognized by the building construction industry, and signed and stamped by an independent licensed engineer or architect.



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**Sec. \_\_-1.14 Certification standards.**

- (a) Pre-construction, during-construction, and post-construction certification of elevation and floodproofing of new construction, development and improvements within the special flood hazard areas shall be submitted to the director and shall be maintained as a matter of public record.
- (b) Pre-construction certification.

Requirements for approval of the building permit shall include the following items, as applicable, and any additional items as required by the director to promote public welfare and safety:

- (1) Certification of building plans.

Each set of building plans shall include a current topographic survey map prepared by a licensed surveyor, and shall be signed and stamped by a licensed engineer or architect certifying the accuracy of the flood boundary and elevation information.

- (2) Flood Hazard Certification.

The City and County of Honolulu's applicable flood hazard certification form, as amended, shall be completed and signed and stamped by a licensed engineer or architect.

- (3) Floodproofing Certification.

The Federal Emergency Management Agency's "Floodproofing Certificate" form, as amended, shall be completed and signed and stamped by a licensed engineer or architect.

- (4) Certification of No-rise Determination.

For all construction and improvements in the floodway, the Federal Emergency Management Agency's "No-rise Certification" form, as amended, shall be completed and signed and stamped by a licensed engineer.



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## A BILL FOR AN ORDINANCE

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(b) During-construction certification.

Upon placement of the lowest floor, including the basement, and prior to further vertical construction of a new or substantially improved structure in the special flood hazard area, the Federal Emergency Management Agency's "Elevation Certificate," as amended, shall be completed and signed and stamped by a licensed surveyor.

(c) Post-construction certification.

As a condition for the closing of the building permit or issuance of a certificate of occupancy for a new or substantially improved structure in the special flood hazard area, the Federal Emergency Management Agency's "Elevation Certificate," as amended, shall be completed and signed and stamped by a licensed surveyor, engineer or architect.

SECTION 7. In Sections 3 and 4, ordinance material to be repealed is bracketed and new material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material, or the underscoring.



A BILL FOR AN ORDINANCE

SECTION 8. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Ernest Martin (br)

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DATE OF INTRODUCTION:

August 30, 2013  
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

*Robert S. Kuterba*  
Deputy Corporation Counsel

APPROVED this 22 day of MAY, ~~2013~~ <sup>2014</sup>.

*Kirk Caldwell*  
KIRK CALDWELL, Mayor  
City and County of Honolulu



CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

ORDINANCE 14-9

BILL 56 (2013), CD2

Introduced: 08/30/13 By: ERNEST MARTIN (BR)

Committee: ZONING AND PLANNING

Title: RELATING TO FLOOD HAZARD AREAS.

Voting Legend: \* = Aye w/Reservations

09/11/13	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.
11/01/13	ZONING AND PLANNING	CR-355 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AS AMENDED IN CD1 FORM AND SCHEDULING OF A PUBLIC HEARING.
11/02/13	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
11/13/13	COUNCIL/PUBLIC HEARING	CR-355 ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 8 AYES: ANDERSON, CHANG, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE. 1 ABSENT: FUKUNAGA.
11/20/13	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
11/21/13	ZONING AND PLANNING	CR-373 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AS AMENDED IN CD2 FORM.
12/11/13	COUNCIL	CR-373 AND BILL 56 (2013) WERE DEFERRED. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.
02/19/14	COUNCIL	BILL 56 (2013), CD1 ADDED TO AGENDA 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE. 90-DAY EXTENSION GRANTED. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE
05/07/14	COUNCIL	CR-373(13) ADOPTED AND BILL 56 (2013), CD2 PASSED THIRD READING AS AMENDED. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

  
BERNICE K. N. MAU, CITY CLERK

  
ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER

14-9

# CHAPTER 21A: FLOOD HAZARD AREAS

## Article

### 1. General Provisions

## **ARTICLE 1: GENERAL PROVISIONS**

## Sections

- 21A-1.1 Purpose
- 21A-1.2 Statutory authority
- 21A-1.3 Administration
- 21A-1.4 Definitions
- 21A-1.5 Special flood hazard areas
- 21A-1.6 General development standards
- 21A-1.7 Floodway area
- 21A-1.8 Flood fringe area
- 21A-1.9 Coastal high hazard area
- 21A-1.10 General floodplain
- 21A-1.11 Developments adjacent to watercourse outside the flood hazard area
- 21A-1.12 Flood variance
- 21A-1.13 Substantial improvements
- 21A-1.14 Certification standards

### **§ 21A-1.1 Purpose.**

(a) Within the City and County of Honolulu, certain areas are subject to periodic inundation by flooding or tsunami or both, resulting in loss of life and property, creation of health and safety hazards, disruption of commerce and governmental services as well as extraordinary public expenditures for flood and tsunami protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards, which increase flood heights and velocities also contribute to flood losses.

(c) Congress has determined that regulation of construction in areas subject to flood hazards is necessary for the protection of life and property and reduction of public costs for flood control, rescue and relief efforts, thereby promoting the safety, health, convenience, and general welfare of the community. To achieve these purposes, this chapter establishes flood hazard areas and imposes restrictions upon man-made changes to improved and unimproved real estate within the areas. **These restrictions are necessary to qualify the city for participation in the federal flood insurance program.**

(d) Failure to participate in the program would result in the denial of federal financial assistance for acquisition and construction purposes, and would jeopardize the making, securing, extension, and renewal of loans secured by improved real estate by lending institutions regulated by the federal government.

(e) **This chapter is designed to:**

- (1) Protect human life and health and promote the general welfare;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- (6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- (7) Ensure that potential buyers are notified that property is in an area of special flood hazard; and

(8) Ensure that those who occupy or develop, or both, the areas of special flood hazard assume responsibility for their actions.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.1) (Added by Ord. 14-9)

### § 21A-1.2 Statutory authority.

This chapter is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (Public Laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended, and HRS Chapter 46.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.2) (Added by Ord. 14-9)

### § 21A-1.3 Administration.

(a) *Designation of floodplain administrator.* The director of planning and permitting is appointed to administer, implement, and enforce this chapter by granting or denying development permits in accordance with its provisions.

(b) Duties and responsibilities shall include but not be limited to the following:

- (1) Review all development permits to determine that the requirements of this chapter have been satisfied, the project site is reasonably safe from flooding, and other required federal or State approvals are obtained;
- (2) Where base flood elevation data have not been provided on the federal flood insurance rate maps, the director shall obtain, review, and reasonably use any base flood elevation and floodway data available from a federal or State agency, or other source, to administer this chapter;
- (3) Whenever a watercourse is proposed to be altered or relocated, require that the flood carrying capacity within the altered or relocated watercourse be maintained;
- (4) Obtain and maintain for public inspection, certifications and documentation required by this chapter, including a record of all variance actions;
- (5) Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions; and
- (6) Take action to remedy violations of this chapter.

(c) *Appeals.* This chapter is a zoning ordinance and appeals from the actions of the director in the administration of this chapter shall be to the zoning board of appeals as provided by Charter § 6-1516. Appeals shall be filed within 30 days of the date of mailing or personal service of the director's written decision.

(d) *Enforcement.* If the director determines that there is a violation of this chapter or any permit issued pursuant thereto, the violator shall be subject to the code enforcement rules of the department.

(e) *Warning and disclaimer of liability.*

(1) The degree of flood and tsunami protection required by this chapter is considered reasonable for regulatory purposes and is based on standard engineering methods of study. Larger floods or tsunamis than the base flood as designated on the flood maps, may occur on occasions, or flood or tsunami elevations may be increased by man-made or natural causes. This chapter does not imply that areas outside the flood hazard area will be free from flooding or damage.

(2) This chapter shall not create liability on the part of the city or any officer, official, or employee for any flood or tsunami damages that result from reliance on this chapter or any administrative decision lawfully made under this section.

(f) *Other laws and regulations.* All construction and improvements subject to this chapter shall comply with federal, State, and other applicable city laws and regulations including but not limited to the zoning, building, housing, plumbing, and electrical codes, and grading ordinances. This chapter, designed to reduce flood losses shall take precedence over any less restrictive, conflicting laws, ordinances, or regulations.

(g) *No exemptions.* Neither the city nor any agency, department, or division under its control shall be exempted from compliance with this chapter.

(h) *Severability.* This chapter and the various parts thereof are declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

(i) *Fees.*

Type of Permit	Fee
(1) Floodway permit	\$600
(2) Flood variance	\$600

(3) Letter of map amendment (LOMA), and revision based on fill (LOMR-F)	\$300
(4) Letter of map revision (LOMR), and physical map revision (PMR)	\$600
(5) Flood hazard area interpretation	\$150

(1990 Code, Ch. 21A, Art. 1, § 21A-1.3) (Added by Ord. 14-9; Am. Ord. 16-30)

### § 21A-1.4 Definitions.

Definitions contained in regulations governing the National Flood Insurance Program, 44 CFR Parts 59 through 77, as amended, are incorporated by reference and made a part of this chapter as though set forth fully herein. Where terms are not defined in this chapter, they shall have their ordinary accepted meanings within the context in which they are used. For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

**Architect.** A person who has a license to practice architecture in the State of Hawaii.

**Base Flood.** The flood having a 1 percent chance of being equaled or exceeded in any given year (also called the “100-year flood”).

**Base Flood Elevation.** The water surface elevation of the base flood.

**Basement.** Any area of a building having its floor below ground level on all sides.

**Breakaway Wall.** Any type of wall, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material, which is not part of the structural support of a building and which is designed to break away without damaging the structural integrity of the building or other buildings to which it might be carried by floodwaters.

**Coastal High Hazard Area.** A special flood hazard area subject to high velocity wave action from storms or seismic sources and designated on the flood insurance rate map as zone VE or V.

**Development.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**Director.** The director of planning and permitting of the City and County of Honolulu or the director’s authorized representative.

**Encroachment.** The advance or infringement of uses, plant growth, fill, excavation, walls, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.

**Engineer.** A person who is licensed to practice civil or structural engineering in the State of Hawaii.

**FEMA.** The Federal Emergency Management Agency.

**Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, resulting from any source, such as tsunamis, or the unusual and rapid accumulation of runoff of surface waters or mud from any source.

**Flood Fringe Area.** A special flood hazard area consisting of the area of the flood fringe designated on the flood insurance rate map as zone AE, AO, and AH.

**Flood Insurance Rate Map or FIRM.** The map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study.** The report provided by the Federal Emergency Management Agency that includes flood profiles, the flood insurance rate map, the flood hazard boundary map, and the water surface elevation of the base flood.

**Floodproofing.** Any combination of structural and nonstructural additions, changes, or adjustments to structures and properties that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

**Floodway.** The channel or watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot.

**Floodway Area or AEF.** A special flood hazard area consisting of the portion of zone AE designated on the flood insurance rate map as a floodway.

**Floodway Permit.** A permit required under this chapter for a structure within the floodway area.

**Fraud and Victimization.** As related to § 21A-1.12, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the city will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for 50 to 100 years. Buildings that are permitted to

be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

**Functionally Dependent Use.** A use which cannot perform its intended purpose, unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

**General Floodplain.** A special flood hazard area for which detailed engineering studies were not performed by FEMA to determine the base flood elevations or to identify the floodway, and is identified as zone A on the flood insurance rate map.

**Hardship.** As related to § 21A-1.12, means the exceptional hardship that would result from a failure to grant the requested variance. The city requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional "hardship". All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest Adjacent Grade.** The highest natural elevation of the ground surface before construction next to the proposed walls of a structure.

**Historic Structure.** A structure that is:

- (1) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a State inventory of historic places pursuant to a historic preservation program approved by the Secretary of Interior; or
- (4) Individually listed on a local inventory of historic places pursuant to a historic preservation program certified either:
  - (A) By an approved State program as determined by the Secretary of the Interior; or
  - (B) Directly by the Secretary.

**Lowest Floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not modified so as to render the use in violation of the elevation design requirement of this chapter.

**Manufactured Home.** A structure (other than a recreational vehicle), transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities.

**Mean Sea Level.** The national geodetic vertical datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

**New Construction.** Structures for which the "start of construction" commenced on or after May 22, 2014\* and includes any subsequent improvements to such structures.

**Public Safety and Nuisance.** As related to § 21A-1.12, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**Recreational Vehicle.** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Repetitive Loss Structure.** A structure that was damaged by flood two or more times within any 10-year period, where the cost of fully repairing the flood damage to the structure, on average, equaled or exceeded 25 percent of its market value at the time of each flood.

**Special Flood Hazard Area or SFHA.** An area having special flood or flood-related erosion hazards, and shown on a FIRM as zone A, AO, AE, AEF, AH, VE, or V.

**Start of Construction.** Includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The “actual start” means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure.** For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, and a manufactured home.

**Substantial Damage.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure (excluding land) before the damage occurred.

**Substantial Improvement.** Any reconstruction, rehabilitation, addition, or series of reconstruction, rehabilitation, or additions, or other proposed new development of a structure or repetitive loss structure, in any five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure (excluding land) before the “start of construction” of the first improvement during that five-year period. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term also includes the relocation of a structure even if the cost of improvements associated with the relocation does not equal or exceed 50 percent of the market value of the structure. An improvement shall constitute a substantial improvement only if:

- (1) The structure was constructed on or before September 3, 1980;
- (2) The structure was constructed after September 3, 1980, and was not within a special flood hazard area at the time of the issuance of the building permit;
- (3) The structure was constructed after September 3, 1980, and was the subject of a map change that resulted in higher base flood elevations; or
- (4) The structure was constructed after September 3, 1980, and was the subject of a map change that resulted in a FIRM zone change.

The term does not, however, include either:

- (5) Any project for improvement of a structure to correct existing violations of State or county health, sanitary, or safety specifications; or
- (6) Any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

**Surveyor.** A person who is licensed to practice surveying in the State of Hawaii.

**Violation.** The failure of a structure or other development to be fully compliant with this chapter. A structure or other development without a required elevation certificate, other certification, or other evidence of compliance with this chapter shall be presumed to be in violation until such time as the required certificate or other evidence of compliance is provided.

**Watercourse.** A stream, wash, channel, or other topographic feature on or over which waters flow at least periodically.

**Water Surface Elevation.** The height, in relation to the national geodetic vertical datum (NGVD) of 1929 (or other datum, where specific), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**Zoning Lot.** A zoning lot as defined by the land use ordinance, Chapter 21, as amended.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.4) (Added by Ord. 14-9)

**Editor’s note:**

\* “May 22, 2014” is substituted for “the effective date of this ordinance, as amended.”

### § 21A-1.5 Special flood hazard areas.

(a) *Applicability.* This chapter shall apply to all lands within the special flood hazard areas as determined by the director or as delineated on the flood insurance rate maps (FIRM) prepared by the FEMA, or both. The following special flood hazard areas are established:

- (1) Floodway area (floodway in zone AE);
- (2) Flood fringe area (zones AE, AO, AH);

- (3) Coastal high hazard area (zone VE, V); and
- (4) General floodplain area (zone A).

(b) *Adoption of federal flood maps and reports.* The special flood hazard areas identified by the FEMA in the flood insurance rate maps and flood insurance study dated January 19, 2011, and any subsequent revisions and amendments (hereinafter called "flood maps") are adopted and declared to be part of this chapter. The flood maps are on file at the City and County of Honolulu Department of Planning and Permitting, 650 S. King Street, Honolulu, Hawaii 96813.

(c) The flood hazard areas and base flood elevations shall be determined by the flood maps. Where interpretation is needed as to whether or not a project lies within a certain flood hazard area, or interpretation is needed on the base flood elevation in the floodway, flood fringe, or coastal high hazard areas, a request for interpretation of the flood maps shall be submitted to the director for determination. The request shall include the project site and location plan, property lines, and dimensions and tax map key.

(d) Where flood hazard areas and base flood elevations have not been determined on the flood maps, the director shall obtain and review the information needed to make this determination. A request for interpretation under this section shall be submitted to the director and include three sets of documents, stamped and signed by a licensed professional engineer, containing adequate information and substantiating data consistent with this part, such as flood study, flood data, project site and location plan, property lines and dimension, tax map key, and topographic data, contours, or spot elevations based on reference marks on flood maps. Upon initial review by the director, other related information may be subsequently required to evaluate the request.

(e) *Flood map revisions.* Whenever base flood elevations may change due to a proposed development, the applicant shall obtain a conditional letter of map revision from the FEMA before the approval or issuance of any development permit. A letter of map revision shall be obtained from the FEMA whenever a development has changed the base flood elevation within any special flood hazard area. An application for a letter of map revision shall be submitted to the FEMA no later than six months after the completion of a development.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.5) (Added by Ord. 14-9)

### **§ 21A-1.6 General development standards.**

Structures within the special flood hazard areas shall conform to the following:

- (1) Be designed and adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including effects from buoyancy caused by the base flood;
- (2) Constructed of flood-resistant materials;
- (3) Constructed by methods and practices that minimize flood damage;
- (4) Constructed with electrical, heating, ventilation, plumbing, air conditioning, and other service facilities that are designed or located, or both, so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) Provided with adequate drainage to minimize damage in accordance with the storm drainage standards of the department;
- (6) For new or replacement potable water system and facilities, be designed to minimize or eliminate infiltration of flood waters into the systems;
- (7) For new or replacement sanitary sewer system and waste disposal system, be designed, located, and constructed so as to minimize impairment to them or contamination from them during and after flooding by the base flood;
- (8) *Manufactured homes.* Manufactured homes that are placed or substantially improved within special flood hazard areas that are not coastal high hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to, or above, the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Manufactured homes that are placed or substantially improved within coastal high hazard areas shall meet the requirements of § 21A-1.9;
- (9) *Recreational vehicles.* Recreational vehicles placed within a special flood hazard area shall either:
  - (A) Be on site for fewer than 30 consecutive days;
  - (B) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by a quick disconnect type utilities and security device, and has no permanently attached additions); or
  - (C) Meet the requirements for manufactured homes under subsection (8).
- (10) A structure that straddles two or more special flood hazard areas shall comply with the standards of the flood hazard area that is considered to have the most stringent or restrictive standards.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.6) (Added by Ord. 14-9)

### **§ 21A-1.7 Floodway area.**

The floodway identified on the flood maps and located within areas of special flood hazard is the watercourse reserved to discharge the base flood. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which could carry debris, and erosion potential, the following apply.

- (a) A floodway permit must be obtained from the director before approval or issuance of any other permits for all new construction of or substantial improvements to structures within the floodway area.
- (b) A restrictive covenant shall be inserted in the deeds and other conveyance documents of the property and recorded or filed with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate, providing that a permit has been granted to a property located in a floodway area that is subject to flooding and flood damage, increases risks to life and property, and the property owners shall not file any lawsuit, action, or claim against the city for costs or damages, and shall indemnify and save harmless the city from any liability when such loss, damage, injury, or death results due to the permit and the flooding of the property. Upon approval of the floodway permit, such covenant shall be fully executed and recorded. Proof of recordation shall be submitted to the director before issuance of any building permits.
- (c) Any temporary or permanent encroachment, including fill, structures, storage of material or equipment, or other development within the floodway, shall not be approved, unless certification and supporting data, including hydrologic and hydraulic analyses performed in accordance with standard engineering practice, are provided by a licensed engineer demonstrating that the proposed encroachment will not cause any increase in base flood elevations during the occurrence of the base flood.
- (d) Proposed structures in the floodway area shall additionally comply with the general development standards and flood fringe area provisions of this chapter.
- (e) No more than two dwelling units shall be permitted on a single zoning lot whose only buildable area is in the floodway.
- (f) Within an area designated AE without a floodway on the flood maps, until a floodway is designated, no new construction, substantial improvement, or other development (including fill) shall be permitted, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1 foot at any point.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.7) (Added by Ord. 14-9; Am. Ord. 16-30)

### **§ 21A-1.8 Flood fringe area.**

In addition to the general development standards, the following standards shall be applicable in the flood fringe area.

- (a) *In areas designated on the flood maps as zone AE or AH.*
  - (1) All new construction or substantial improvements of residential structures shall have the lowest floor, including basements, elevated to or above the base flood elevation.
  - (2) All new construction or substantial improvements of nonresidential structures shall have the lowest floor elevated to or above the base flood elevation; or together with attendant utility and sanitary facilities, be designed and constructed so that below the base flood elevation, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy due to the base flood.
  - (3) Within zone AH, adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.
- (b) *In areas of shallow flooding designated on the flood maps as zone AO.*
  - (1) All new construction or substantial improvements of residential structures shall have the lowest floor, including basements, elevated above the highest adjacent grade at least as high as the depth number specified on the flood maps.
  - (2) All new construction or substantial improvements of nonresidential structures shall have the lowest floor elevated above the highest adjacent grade at least as high as the depth number specified on the flood maps; or together with attendant utility and sanitary facilities, be designed and constructed so that below that level, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  - (3) Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.
- (c) All new construction or substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must meet the following minimum criteria:



- (1) For nonengineered openings:
  - (A) Have a minimum of two openings on different sides having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding;
  - (B) The bottom of all openings shall be no higher than 1 foot above internal or external grade whichever is highest;
  - (C) Openings may be equipped with screens, louvers, valves, or other coverings or devices; provided that they permit the automatic entry and exit of floodwaters; and
  - (D) Buildings with more than one enclosed area must have openings on exterior walls for each area to allow floodwater directly enter.
- (2) Be certified by a licensed engineer or architect.

(d) A licensed professional architect or engineer shall develop or review the design, specifications, and plans and certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this chapter, and include the elevation to which such structures are floodproofed.

(e) New construction and substantial improvements of below-grade crawlspaces must be constructed in accordance with the requirements of FEMA Technical Bulletin 11-01 and amendments thereto. A licensed engineer or architect must certify that designs for below-grade crawlspaces meet these requirements.

(f) Accessory residential structures of less than 600 square feet that are used solely for parking or limited storage or both, and are constructed with the lowest floor below the base flood elevation, must be designed to meet the following minimum criteria.

- (1) The structure must be anchored to resist flotation, collapse, and lateral movement;
- (2) Any portion of the structure located below the base flood elevation must be constructed of flood-resistant materials;
- (3) The structure must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters in accordance with preceding subsection (c);
- (4) All mechanical and utility equipment housed inside the structure must be elevated to or above the base flood elevation; and
- (5) The use of the structure must be limited to parking or limited storage or both.

A licensed engineer or architect shall certify that designs for accessory residential structures subject to this subsection meet these minimum criteria.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.8) (Added by Ord. 14-9; Am. Ord. 16-30)

### **§ 21A-1.9 Coastal high hazard area.**

In addition to the general development standards, the following standards shall be applicable in the coastal high hazard area.

- (a) (1) All new construction or substantial improvements of residential and nonresidential structures shall be elevated on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation.
  - (2) Piles or column foundations and structures attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a 1 percent chance of being equaled or exceeded in any given year.
- (b) (1) All new construction or substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the structure or supporting foundation.
  - (2) Such enclosed space shall not be used for human habitation and shall be used solely for parking of vehicles, building access, or storage.
  - (3) A breakaway wall shall have a design-safe loading resistance of not less than 10 and not more than 20 pounds per square foot, or a licensed architect or engineer shall certify that the breakaway wall shall collapse from a water load less than that which would occur during the base flood.
- (c) The use of fill for structural support of buildings shall be prohibited.
- (d) All new development shall be constructed landward of the reach of the mean high tide.
- (e) Human alterations of sand dunes and native mangrove stands which would increase potential flood damage shall be prohibited.

(f) A licensed architect or engineer shall develop or review the design, specifications, and plans and certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this chapter, and that any development in the coastal high hazard area, including structures and improvements, would not affect the base flood nor aggravate existing flood-related erosion hazards.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.9) (Added by Ord. 14-9)

### **§ 21A-1.10 General floodplain.**

(a) All proposed development within the general floodplain (unnumbered zone A) shall be subject to review and approval of the director. The developer shall provide information signed and stamped by a licensed engineer, to evaluate the flooding and to determine the base flood elevation, and whether the project site is located within a floodway or flood fringe area, under § 21A-1.5(d).

(b) The director in reviewing the application may consult with other city, State, and federal agencies for their comments and recommendations, and shall review the related flood data such as flood elevation, riverine flood velocities, boundaries, etc., and evaluate and determine whether the proposed project is located within a floodway or flood fringe area.

(c) If it is determined that the proposed project is within a floodway area, the project shall comply with § 21A-1.7. If it is determined that the proposed project is within a flood fringe area, it shall comply with § 21A-1.8. Until a floodway or flood fringe area is designated, no development shall be allowed that would increase the water surface elevation of the base flood more than 1 foot at any point.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.10) (Added by Ord. 14-9)

### **§ 21A-1.11 Developments adjacent to watercourse outside the flood hazard area.**

(a) Applications for building permits for development projects located on property encompassing or adjacent to a property with a watercourse outside of the special flood hazard areas identified on the federal flood maps, shall be subject to review and approval of the director. The application shall include information signed and stamped by a licensed engineer, to evaluate the potential flooding of the area.

(b) The director in reviewing the application may consult with other city, State, and federal agencies for their comments and recommendations. If it is determined that the proposed project is within a floodway area, the project shall comply with § 21A-1.7. If it is determined that the proposed project is within a flood fringe area, the project shall comply with § 21A-1.8.

(c) No watercourse shall be modified, constructed, lined, or altered in any way unless approved by the director.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.11) (Added by Ord. 14-9)

### **§ 21A-1.12 Flood variance.**

(a) The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

This chapter is designed to help protect the community from flood loss and damage. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this article are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

(b) The following may be permitted as a variance from this chapter subject to review and approval of the director:

- (1) New construction or substantial improvement of structures, and other proposed new development to be erected on a lot of 0.5 acre or less in area, contiguous to and surrounded by lots with existing structures constructed below the base flood elevation;
- (2) Repair or rehabilitation of historic structures upon a determination that the proposed reconstruction or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
- (3) Improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications, which have been identified by a code enforcement official and which are the minimum necessary to assure safe living conditions;
- (4) New construction or substantial improvement of structures, and other proposed new development necessary for the conduct of a functionally dependent use; and

(5) New construction or substantial improvement of public beach park facilities.

(c) The application shall be submitted to the director and signed and stamped by a licensed architect and engineer, and shall include three sets of documents with the following information as may be applicable:

(1) Plans and specifications showing the site and location; dimensions of all property lines and topographic survey of the zoning lot; existing and proposed structures and improvements, fill, and storage areas; location and elevations of existing and proposed streets and utilities; floodproofing measures; relationship of the site to the location of the flood boundary; and the existing and proposed flood control measures and improvements;

(2) Cross-sections and profiles of the area and the base flood elevations and profile referenced to the national geodetic vertical datum (NGVD) of 1929;

(3) Flood study and drainage report data;

(4) Description of surrounding properties and existing structures and uses, and the effect the variance may have on them and the base flood;

(5) Justification and reasons for the variance in relationship to the intent and provisions of this section, with information as may be applicable on the following:

(A) The danger to life and property, including surrounding properties due to increased flood elevations or velocities caused by the variance;

(B) The danger that materials may be swept onto other lands or downstream to the injury of others;

(C) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;

(D) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;

(E) The importance of the services provided by the proposed facility to the community;

(F) The availability of alternative locations not subject to flooding for the proposed use;

(G) The compatibility of the proposed use with existing and anticipated development;

(H) The relationship of the proposed use to the floodplain management program for the area;

(I) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(J) The expected elevations and velocity of the base flood at the site due to the variance;

(K) That failure to grant the variance would result in exceptional hardship to the applicant; and

(L) That the variance will not result in increased base flood elevations, additional threat to surrounding properties and to public safety, extraordinary public expense, create a nuisance, cause fraud and victimization of the public, or conflict with other laws or regulations.

(6) A restrictive covenant which shall be inserted in the deeds and other conveyance documents of the property and recorded or filed with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate, providing that a flood variance has been granted to a property located in a special flood hazard area that is subject to flooding and flood damage, that a variance for a structure with its lowest floor below the base flood elevation increases risks to life and property, and that the property owners shall not file any lawsuit, action, or claim against the city for costs or damages, and shall indemnify and save harmless the city from any liability when such loss, damage, injury, or death results due to the flood variance and the flooding of the property. Upon approval of the flood variance, such covenant shall be fully executed and recorded. Proof of recordation shall be submitted to the director before issuance of any building permits; and

(7) Such other factors which are relevant to the purposes of this section.

(d) The director in reviewing the variance may consult with other city, State, and federal agencies for their comments and recommendations. A flood variance may be granted only upon a:

(1) Showing of good and sufficient cause;

(2) Determination that failure to grant the variance would result in exceptional hardship to the applicant;

(3) Determination that the granting of a variance will not result in increased flood elevations, additional threat to public safety, extraordinary public expense, create a nuisance, cause fraud and victimization of the public, or conflict with other laws or regulations; and

(4) Determination that a variance granted within a floodway area would not result in any increase of the base flood elevation.

(e) The director may approve, approve with conditions, or deny the variance. Such conditions may include but not be limited to:

- (1) Modification of the project, including the sewer and water supply facilities;
- (2) Limitations on periods of use and operation;
- (3) Imposition of operational controls, sureties, and deed restrictions;
- (4) Requirements for construction of channels, dikes, levees, and other flood protective measures;
- (5) Floodproofing measures designed consistent with the base flood elevation, flood velocities, hydrostatic and hydrodynamic forces, and other factors associated with the base flood; and
- (6) Other conditions as may be deemed necessary by the director to further the purposes of this chapter.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.12) (Added by Ord. 14-9)

### **§ 21A-1.13 Substantial improvements.**

(a) All structures proposed to be substantially improved must be brought into compliance with this chapter. For the purpose of determining substantial improvement, the applicant shall provide the market value of a structure and the cost of the proposed improvements to the structure from the following sources:

- (1) Itemized estimates made by an independent professional construction estimator;
- (2) Appraisals prepared by an independent licensed appraiser, including appraisals of market value; and
- (3) Calculations based on square foot cost factors published in building cost estimating guides recognized by the building construction industry, and signed and stamped by an independent licensed engineer or architect.

(b) The director may require additional or revised documentation should the estimated market value or cost of improvements appear to be inconsistent with the specific characteristics of the building.

(1990 Code, Ch. 21A, Art. 1, § 21A-1.13) (Added by Ord. 14-9; Am. Ord. 16-30)

### **§ 21A-1.14 Certification standards.**

Pre-construction, during-construction, and post-construction certification of elevation and floodproofing of new construction, development, and improvements within the special flood hazard areas must be submitted to the director and must be maintained as a matter of public record, in accordance with the following.

(a) *Pre-construction certification.* Requirements for approval of the building permit must include the following items, as applicable, and any additional items as required by the director to promote public welfare and safety.

- (1) *Certification of building plans.* Each set of building plans must include a current topographic survey map prepared by a licensed surveyor, and must be signed and stamped by a licensed engineer or architect certifying the accuracy of the flood boundary and elevation information.
- (2) *Flood hazard certification.* The city's applicable flood hazard certification form must be completed and signed and stamped by a licensed engineer or architect.
- (3) *Floodproofing certification.* The Federal Emergency Management Agency "Floodproofing Certificate" form must be completed and signed and stamped by a licensed engineer or architect.
- (4) *Certification of no-rise determination.* For all construction and improvements in the floodway, the Federal Emergency Management Agency "No-Rise Certification" form must be completed and signed and stamped by a licensed engineer.

(b) *During-construction certification.* Upon placement of the lowest floor, including the basement, and before further vertical construction of a new or substantially improved structure in the special flood hazard area, the Federal Emergency Management Agency "Elevation Certificate" must be completed and signed and stamped by a licensed surveyor.

(c) *Post-construction certification.* As a condition to the closing of the building permit or issuance of a certificate of occupancy for a new or substantially improved structure in the special flood hazard area, the Federal Emergency Management Agency "Elevation Certificate" must be completed and signed and stamped by a licensed surveyor, engineer, or architect.

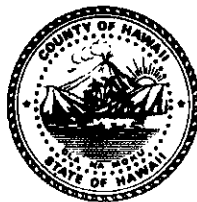
(1990 Code, Ch. 21A, Art. 1, § 21A-1.14) (Added by Ord. 14-9; Am. Ord. 16-30)

**Ordinance No. 07-169 Amending Chapter 27, Flood Control, Hawai'i County Code 1983, As Amended, Relating to Stormwater Management;**

**Ordinance No. 17-56 Amending Chapter 27, Flood Control, Hawai'i County Code 1983, As Amended, to Comply with National Flood Insurance Program Regulations**

Chapter 27 Floodplain Management

COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 07 169 BILL NO. 51  
(Draft 6)

AN ORDINANCE AMENDING CHAPTER 27, FLOOD CONTROL, HAWAI'I COUNTY CODE 1983 (2005 EDITION), AS AMENDED, RELATING TO STORMWATER MANAGEMENT.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. The purpose of this ordinance is to revise Chapter 27 to comply with current National Flood Insurance Program regulations found in the Code of Federal Regulations, Title 44, Parts 59 through 79; establish drainage improvement standards to control stormwater quality and runoff [~~qualities~~] quantities generated by developments; establish requirements for structures that suffer repetitive losses due to flooding; clarify and restrict substantial improvements; and correct various inconsistencies found in the chapter.

SECTION 2. Chapter 27, Hawai'i County Code 1983 (2005 edition), is amended, by amending the title to read:

**Chapter 27**

**[FLOOD CONTROL] FLOODPLAIN MANAGEMENT**

SECTION 3. Chapter 27, article 1, section 27-1, Hawai'i County Code 1983 (2005 edition), as amended, is amended to read as follows:

**Section 27-1. Statutory authority.**

This chapter is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (Public Laws 90-418 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended. In addition, the Legislature of the State of Hawai'i has in Hawai'i Revised Statutes [~~62-34(9), 62-34(18), 70-100,~~] 46-1.5(5), 46-1.5(14), 46-11, 46-11.5, and 46-12 conferred upon the various counties the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

SECTION 4. Chapter 27, article 2, section 27-5, Hawai'i County Code 1983 (2005 edition), as amended, is amended to read as follows:

**Section 27-5. Applicability.**

- (a) This chapter shall apply to all areas of special flood hazards identified by the Federal [~~Insurance Administration~~] Emergency Management Agency

in a scientific and engineering report entitled "Flood Insurance Study," dated ~~[July 16, 1990,]~~ April 2, 2004, with accompanying Flood Insurance Rate Maps and all ~~[subsequent]~~ future changes, revisions and amendments~~[s]~~ to these documents, and shall apply to all areas bordering identified special flood hazard areas, and all other areas outside the identified special flood hazard areas encompassing and adjacent to a river, stream, stormwater channel, outfall area, or other inland water or drainage facility determined by the director of public works to be subject to flood hazards. The special flood hazard areas are as follows:

- (1) Floodway fringe - Zones AE, AH, and AO.
  - (2) Floodway.
  - (3) Coastal high hazard (tsunami) - Zones V and VE.
  - (4) General floodplain - Zone A.
  - (5) Land adjacent to drainage facilities, and Zone A99.
- (b) This chapter shall not apply to:
- (1) Any building permit lawfully issued prior to May 5, 1982 or building permit application properly filed and accepted for review prior to May 5, 1982, provided that approval was obtained without any significant changes in plans or specifications made after May 5, 1982.
  - (2) Roadway and site improvements for subdivisions for which tentative approval had been granted prior to May 5, 1982 and where roadway and site improvement construction and grading plans had received all necessary agency approvals by May 5, 1982.
  - (3) Carnivals, lū'aus, fairs, and camping tents of a temporary nature which are not in a floodway.
  - (4) Nonfenced, ~~[nonelevated]~~ at grade outdoor swimming pools.
  - (5) Signs which are not in a floodway.
  - (6) Demolition.

SECTION 5. Chapter 27, article 2, section 27-6, Hawai'i County Code 1983 (2005 edition), as amended, is amended to read as follows:

**Section 27-6. Basis.**

The areas of special flood hazard identified by the ~~[Federal Insurance Administration of the]~~ Federal Emergency Management Agency in the Flood Insurance Study dated ~~[July 16, 1990,]~~ April 2, 2004, along with all subsequent revisions and amendments, and the Flood Insurance Rate Maps, dated April 2, 2004, May 16, 1994, July 16, 1990, and September 16, 1988, and all future changes, revisions, and amendments to these documents, are hereby adopted and declared to be a part of this chapter. ~~[This Flood Insurance Study and attendant mapping, with updates and revisions included by ordinance amendments, are the minimum area of applicability of this chapter.]~~ The Flood Insurance Study and Flood Insurance Rate Maps, ~~[as amended,]~~ and all future changes, revisions, and amendments to these documents, are on file at the Aupuni Center, Department of Public Works, 101 Pauahi Street, ~~[Room]~~ Suite 7, Hilo, Hawai'i 96720.

- ~~[(a) — The May 16, 1994 updated Flood Insurance Study, FIRM panels 0168E, 0713D, 0926D, and Map Index panel, are hereby adopted and declared to be a part of this chapter.~~
- ~~(1) — The May 16, 1994 Flood Insurance Study shall supplement the July 16, 1990 Flood Insurance Study.~~
- ~~(2) — The FIRM panels 0168E, 0713D and 0926D shall replace the FIRM panels 0168D, 0713C and 0926C, respectively.~~
- ~~(3) — The May 16, 1994 Map Index panel shall replace the July 16, 1990 Map Index panel.~~
- ~~(b) — The June 2, 1995 updated Flood Insurance Study, FIRM Panels 0926E, 0927D and Map Index panel are hereby adopted and declared to be a part of this chapter.~~
- ~~(1) — The June 2, 1995 Flood Insurance Study shall supplement the May 16, 1994 and July 16, 1990 Flood Insurance Studies.~~
- ~~(2) — The FIRM panels 0926E and 0927D shall replace the FIRM panels 0926D and 0927C, respectively.~~
- ~~(3) — The June 2, 1995 Map Index panel shall replace the May 16, 1994 Map Index panel.]~~

SECTION 6. Chapter 27, article 2, section 27-8, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-8. Other laws and regulations.**

All construction and improvements subject to this chapter shall comply with other applicable laws and regulations including, but not limited to, the zoning, building, electricity, plumbing, subdivision, erosion and sedimentation control chapters of the Hawai'i County Code, and the storm drainage standards, October 1970 edition, or later revisions, of the County of Hawai'i. This chapter, designed to reduce flood losses, shall take precedence over any less restrictive, conflicting laws, ordinances, and regulations. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another chapter, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

In the event of a conflict between this chapter and the National Flood Insurance Program and Related Regulations (NFIP), as amended, the ~~[NFIP]~~ more restrictive provision will govern.

SECTION 7. Chapter 27, article 2, section 27-12, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-12. Definitions.**

~~[(a)]~~ Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.



[(1)] "Accessory use" means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

[(2)] "Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this chapter or denial of a request for a variance.

[(3)] "Area of shallow flooding" means a designated AO or AH zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

[(4)] "Backfill" means the placement of fill material within a specified depression, hole or excavation pit below the surrounding adjacent ground level as a means of improving ~~[flood-water]~~ floodwater conveyance or to restore the land to the natural contours existing prior to excavation.

[(5)] "Base flood" means the flood having a one percent chance of being ~~[equalled]~~ equaled or exceeded in any given year (also called the "one-hundred-year flood").

[(6)] "Base flood elevation" means the water surface elevation of the base flood.

[(7)] "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

[(8)] "Breakaway walls" are any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building and which is designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by ~~[flood waters.]~~ floodwaters. A breakaway wall shall have a safe design loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls must be certified by a ~~[registered]~~ licensed structural engineer or architect and shall meet the following conditions:

[(A)] (1) ~~[breakaway]~~ Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

[(B)] (2) ~~[the]~~ The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

"Buffer zones" are areas bordering and within 50 feet of special flood hazard areas with base flood elevations, depth numbers specified in feet on the FIRM or other areas that have been studied and identified with base flood elevations or depth numbers.

[(9)] "Coastal high hazard area" - See "Zone V" and "Zone VE."

~~[(10)] "Critical feature" means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.]~~

[(11)] "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining,

dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

[(12)] “Drainage facility” - See “Watercourse.”

[(13)] “Encroachment” means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

[(14)] “Existing manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before May 5, 1982.

[(15)] “Fill” is the placement of fill material at a specified location to bring the ground surface up to a desired elevation.

[(16)] “Fill material” can be natural sand, dirt, soil or rock. For the purposes of floodplain management, fill material may include concrete, cement, soil cement, brick, or similar material as approved on a case-by-case basis.

[(17)] “Flood, flooding, or ~~[flood-water]~~ floodwater” means:

[(A)] (1) [a] A general and temporary condition of partial or complete inundation of normally dry land areas from:

[(+)] (A) ~~[the]~~ The overflow of inland or tidal waters<sup>[7]</sup>;

[(+)] (B) ~~[the]~~ The unusual and rapid accumulation of runoff or surface waters from any source which are approximately caused by flooding as defined in paragraph (A)(ii) of this definition and are akin to a river of water on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; and

[(B)] (2) ~~[the]~~ The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph [(A)(+)] (1)(A) of this definition.

[(18)] “Flood elevation determination” means a determination by the Federal ~~[Insurance Administrator]~~ Emergency Management Agency of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

[(19)] “Flood elevation study” or “flood study” means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of flood-related erosion hazards.

[(20)] “Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Emergency Management Agency ~~[or Federal Insurance Administration]~~

has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

[(21)] “Flood Insurance Study” means the official report provided by the Federal ~~[Insurance Administration]~~ Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.

[(22)] “Floodplain or flood-prone area” means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

[(23)] “Floodplain administrator” is the individual appointed to administer and enforce the floodplain management regulations. This person shall be the director of public works of the County of Hawai‘i or the director’s duly authorized representative who shall be a currently licensed professional engineer in the State of Hawai‘i.

[(24)] “Floodplain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

[(25)] “Floodplain management regulations” means zoning ordinances, subdivision regulations, building codes, health regulations, and special purpose ordinances (such as a floodplain ordinance or an erosion and sedimentation control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

[(26)] “Flood protection system” means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed to conform with sound engineering standards.

[(27)] “Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

[(28)] “Floodway” or “regulatory floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation ~~[more than one foot]~~.

[(29)] “Floodway fringe” is the areas of a floodplain on either side of the designated floodway where encroachment may be permitted.

[(30)] “Fraud and victimization” related to article 5, variances, of this chapter means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the director of public works will consider the fact that every newly constructed ~~[building]~~ structure adds to government responsibilities and remains a part of the community for fifty to one hundred years. ~~[Buildings]~~ Structures that are permitted to be constructed below the base

flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the ~~[property]~~ structure(s) and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the ~~[property]~~ structure(s), unaware that it is subject to potential flood damage, and ~~the structure(s)~~ can be insured only at very high flood insurance rates.

~~[(31)]~~ “Freeboard” means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

~~[(32)]~~ “Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

~~[(33)]~~ “General floodplain” - See “Zone A.”

~~[(34)]~~ “Hardship” as related to article 5, variances, of this chapter means the hardship that would result from a failure to grant the requested variance. The director of public works requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical disabilities, personal preferences, or the disapproval of one’s neighbors likewise cannot, as a rule, qualify as exceptional hardships. All of these problems can be resolved through other means, without granting a variance. This is so even if the alternative means are more expensive or complicated than building with a variance, or if they require the property owner to put the parcel to a different use than originally intended, or to build elsewhere.

~~[(35)]~~ “Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

~~[(36)]~~ “Historic structure” means any structure that is:

~~[(A)]~~ (1) ~~[listed]~~ Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

~~[(B)]~~ (2) ~~[certified]~~ Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

~~[(C)]~~ (3) ~~[individually]~~ Individually listed on a State of Hawai‘i inventory of historic places[;] where the historic preservation program has been approved by the Secretary of the Interior; or

- [(D)] (4) [~~individually~~] Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
- [(+)] (A) [~~by~~] By an approved State program as determined by the Secretary of the Interior, or
  - [(+)] (B) [~~directly~~] Directly by the Secretary of the Interior in states [~~with~~] without approved programs.

[(37)] “Levee” means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

[(38)] “Levee system” means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

[(39)] “Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building’s lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

[(40)] “Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” includes a “mobile home” but does not include a “recreational vehicle.”

[(41)] “Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

[(42)] “Market value.” For the purposes of determining substantial improvement, market value pertains only to the structure in question. It does not pertain to the land, landscaping, or detached accessory structures on the property. For determining substantial improvement, the value of the land must always be subtracted. Acceptable estimates of market value can be obtained from the following sources:

- [(A)] (1) Independent appraisals by a professional appraiser[~~:-~~] licensed by the State.
- [(B)] ~~———— Detailed estimates of the structure’s actual cash value (used as a viable substitute for market value based on the preference of the community).~~
- [(C)] (2) Property appraisals used for tax assessment purposes[~~:-~~] by the County department of finance, real property tax office.
- [(D)] (3) The value of buildings taken from National Flood Insurance Program claims data[~~(used as a screening tool)~~]. This value shall be used as a screening tool to identify those structures where the substantial improvement ratio is less than forty percent or greater than sixty percent.

~~[(E) Qualified estimates based on sound professional judgement made by staff of the local building department or local or State tax assessor's office. As indicated above, some market value estimates should only be used as screening tools to identify those structures where the substantial improvement ratios are obviously less than or greater than fifty percent (e.g., less than forty percent or greater than sixty percent). For structures that fall between the forty percent and sixty percent range, more precise market value estimates should be used.]~~

[(43)] "Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

[(44)] "Minimum necessary" related to article 5, variances, of this chapter means the minimum necessary to afford relief to the applicant of a variance with a minimum deviation from the requirements of this chapter. In the case of variances to an elevation requirement, this means the director of public works need not grant permission for the applicant to build at grade, for example, or even to whatever elevation the applicant proposes, but only that level that the director of public works believes will both provide relief and preserve the integrity of this chapter.

[(45)] "New construction[;]" for floodplain management purposes, means structures for which the "start of construction" commenced on or after May 5, 1982[-], and includes any subsequent improvements to such structures.

[(46)] "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after May 5, 1982.

[(47)] "Obstruction" includes but is not limited to any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across, or projecting into any watercourse which may alter, impede, retard, or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water or its likelihood of being carried downstream.

[(48)] "One-hundred-year flood" means a flood which has a one percent annual probability of being ~~equalled~~ equaled or exceeded. It is identical to the "base flood."

[(49)] "One-hundred-year floodplain" means any area of land susceptible to being inundated by water from any source generated by the one-hundred-year flood.

[(50)] "Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary

frontal dune occurs at the point where there is a distinct change from a relatively mild slope.

[(51)] “Principal structure” means a structure used for the principal use of the property as distinguished from an accessory use.

“Recreational vehicle” means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

[(52)] “Regulatory floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation [~~more than a designated height~~].

“Repetitive loss structure” means home or business that was damaged by flood two times in the past ten years, where the cost of fully repairing the flood damage to the building, on the average, equaled or exceeded twenty-five percent of its market value at the time of each flood.

[(53)] “Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

[(54)] “Sand dunes” means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

[(55)] “Sheet flow area” - See “area of shallow flooding.”

[(56)] “Special flood hazard area” means an area having special flood or flood-related erosion hazards, and shown on the Flood Insurance Rate Maps as Zones A, AO, AE, A99, AH, VE or V.

“State” means the State of Hawai‘i.

[(57)] “Start of construction” includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred-eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

[(58)] “Structure” means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

[(59)] “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

[(60)] “Substantial improvement.” For the purposes of this chapter, the determination of whether any improvements constitute substantial improvements is applicable only to structures built prior to May 5, 1982 or buildings constructed after May 5, 1982 which were not within a special flood hazard area at the time of issuing the building permit. “Substantial improvement” means any repair, reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the “start of construction” of the improvement which shall be the sum of all costs of all such work performed in the previous ~~three~~ ten years including the cost of the current work being considered. The value of the structure including previous 10 year improvements, shall be certified by a contractor, engineer, or architect licensed by the State and the property owner as may be required on a form provided by the County. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

[(A)] (1) ~~any~~ Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

[(B)] (2) ~~any~~ Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

[(61)] “Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

“Violation” means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance with this chapter is presumed to be in violation until such time as that documentation is provided.

[(62)] “Water surface elevation” means the height, in relation to the National Geodetic Vertical Datum of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

[(63)] “Watercourse” means a lake, river, creek, stream, wash, arroyo, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial damage may occur.

[(64)] “Zone A” is the special flood hazard area that corresponds to the one-hundred-year floodplains that are determined in the Flood Insurance Study by



approximate methods. Because detailed hydraulic analyses are not performed for such areas, base flood elevations or depths have not been determined within this zone.

[(65)] “Zone AE” is the special flood hazard area that corresponds to the one-hundred-year floodplains that are determined in the Flood Insurance Study by detailed methods. Whole-foot base flood elevations derived from the detailed hydraulic analyses have been determined at selected intervals within this zone.

[(66)] “Zone AH” is the special flood hazard area that corresponds to the areas of one-hundred-year shallow flooding (usually areas of ponding) where average depths are between one and three feet. Whole-foot base flood elevations derived from the detailed hydraulic analyses have been determined at selected intervals within this zone.

[(67)] “Zone AO” is the special flood hazard area that corresponds to the areas of one-hundred-year shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average whole-foot depths derived from the detailed hydraulic analyses have been determined within this zone.

[(68)] “Zone A99” is the special flood hazard area where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Base flood elevations have not been determined for areas designated as Zone A99.

“Zone D” corresponds to unstudied areas where flood hazards are undetermined, but possible.

[(69)] “Zone V” is the special flood hazard area that corresponds to the one-hundred-year coastal floodplains extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. Base flood elevations have not been determined for areas designated as Zone V.

[(70)] “Zone VE” is the special flood hazard area that corresponds to the one-hundred-year coastal floodplains extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. Whole-foot base flood elevations derived from the detailed hydraulic analyses have been determined at selected intervals within this zone.

[(71)] “Zone X (shaded)” [~~is the designation given to other flood~~] are areas of [:(A)] moderate flood hazard corresponding to areas of the five-hundred-year floodplain, areas of one-hundred-year flooding where average depths are less than one foot, areas of one-hundred-year flooding where the contributing drainage area is less than one square mile, and areas protected from the one-hundred-year flood by levees [:(B) minimal flood hazard corresponding to areas outside of the five-hundred-year floodplain. Base flood elevations or depths have not been determined for Zone X].

“Zone X (unshaded)” are areas of minimal flood hazard corresponding to areas outside of the five-hundred-year floodplain. Base flood elevations or depths have not been determined for Zone X.

~~[(72) “Zone D” is the other areas that correspond to unstudied areas where flood hazards are undetermined, but possible.]~~

SECTION 8. Chapter 27, article 3, section 27-14, Hawai‘i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-14. Director of public works approval.**

No building permit, certificate of occupancy, or grading permit shall be issued, no ~~[building]~~ structure shall be occupied, and no development or subdivision shall be approved without the approval of the director of public works with respect to compliance with the provisions of this chapter.

SECTION 9. Chapter 27, article 3, section 27-16, Hawai‘i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-16. Duties and responsibilities of the floodplain administrator.**

The floodplain administrator, with the cooperation and assistance of other County departments, shall administer this chapter. The duties and responsibilities of the floodplain administrator shall include, but not be limited to:

- (a) Permit review.
  - (1) All building permits, certificates of occupancy, grading permits, and development or subdivision proposals shall be reviewed to determine whether the requirements of this chapter have been satisfied;
  - (2) All other development permits referred by other governmental departments and agencies shall be reviewed for consistency with the requirements of this chapter;
  - (3) All permits and proposals shall be reviewed to determine that the proposed building site is reasonably safe from flooding;  
~~[and]~~
  - (4) For proposed building sites in flood-prone areas where special flood hazard areas have not been defined, water surface elevations have not been provided, and there is insufficient data to identify the floodway or coastal high hazard areas but the flood plain administrator has determined that there are verifiable physical indications that such hazards are present, all new construction, improvements to repetitive loss structures and substantial improvements (including the placement of manufactured homes) shall be:
    - (A) Designed and adequately anchored to prevent flotation, collapse, or lateral movement;
    - (B) Constructed of flood-resistant materials;

- (C) Constructed by methods and practices that minimize flood damage; and
  - (D) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - (E) Be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
  - (F) New and replacement utilities shall comply with the requirements of section 27-19; and
- [4] (5) All permits shall be reviewed to determine that the proposed development [~~does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development~~] when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood [~~more than one foot~~] at any point.
- (b) Information to be maintained.
    - (1) The Flood Insurance Study and Flood Insurance Rate Maps for the County of Hawai'i;
    - (2) The certification of lowest floor elevation;
    - (3) The certification of floodproofing for spaces below the base flood elevation;
    - (4) The certification of final pad elevation where a site is filled above the base flood elevation;
    - (5) The certification that an encroachment in the floodway will not result in any increase in flood levels during base flood discharge; and
    - (6) The certification of elevation and structural support for structures in the coastal high hazard area.
  - (c) Interpretation of maps. The director of public works shall make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). A person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in article 5.
  - (d) Change in base flood elevations. Whenever base flood elevations increase or decrease or result in a mappable alteration of the boundaries of any special flood hazard area, as a result of physical changes affecting flooding conditions, as soon as practical, but no later than six months after the date such information becomes available, the floodplain administrator

shall notify the Federal [~~Insurance Administration,~~] Emergency Management Agency of the changes by submitting technical or scientific data through the Letter of Map Revision process. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

- ~~[(d)]~~ (e) Use of other base flood data. When base flood elevation data has not been provided in accordance with section 27-6, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal or State agency, or other source, in order to administer article 4. Any such information shall be submitted to the County of Hawai'i for adoption.
- ~~[(e)]~~ (f) Whenever a watercourse is to be altered or relocated:
- (1) Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained;
  - (2) For riverine situations, [Notify] notify the State of Hawai'i department of land and natural resources [~~(division of water resource management)~~] (commission on water resource management) and all adjacent property owners, prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the [~~Federal Insurance Administration,~~] Federal Emergency Management Agency.
  - (3) Whenever a proposed alteration or relocation occurs that would significantly change the base flood elevation or result in a mappable alteration of the boundaries of any special flood hazard area, technical and scientific data through the Conditional Letter of Map Revision (CLOMR) shall be submitted to and approved by the Federal Emergency Management Agency. Such a submission is necessary so that upon completion of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data. Work to be performed under an approved Conditional Letter of Map Revision (CLOMR) shall be subject to the following:
    - (A) Work shall not begin any on-site development affecting or impacting the floodplain until an approved Conditional Letter of Map Revision is received from the Federal Emergency Management Agency;
    - (B) Within sixty (60) days of receiving final approval from director of public works for the completion of the alteration or relocation of a watercourse, the request for a Letter of Map Revision (LOMR), and all other information required by the Letter of Map Revision (LOMR) process shall be submitted to the Flood Plain Administrator.
- ~~[(f)]~~ (g) Take action to remedy violations of this chapter as specified in article 6.

SECTION 10. Chapter 27, article 4, section 27-17, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-17. Certification standards.**

Pre-construction and post-construction certification of elevation and floodproofing of new construction, improvements to repetitive loss structures, development, and substantial improvements within areas of special flood hazards and buffer zones shall be submitted to the director of public works and shall be maintained as a matter of public record.

- (a) Pre-construction certification. Requirements for approval of the building permit shall include the following items, as applicable, and any additional items as required by the director of public works to promote public welfare and safety:
- (1) Certification of building plans. Each set of building plans shall be certified by a structural engineer or architect, currently [~~registered~~] licensed in the State of Hawai'i, to be in compliance with the requirements of this chapter.
  - (2) Elevation certification on building plans. The elevation of the lowest floor shall be certified on each set of the building plans by a civil engineer or land surveyor currently [~~registered~~] licensed in the State of Hawai'i.
  - (3) Special flood hazards area certification. The County of Hawai'i "Special Flood Hazard Area Certification" form, as amended, shall be completed and certified by a structural engineer or architect currently [~~registered~~] licensed in the State of Hawai'i. The completed "Special Flood Hazard Certification" shall be submitted for approval with the building plans.
  - (4) Floodproofing certification. For all new nonresidential construction and substantial improvement with enclosed areas below the base flood elevation, the Federal Emergency Management Agency "Floodproofing Certificate" form, as amended, shall be completed and certified by an engineer or architect currently [~~registered~~] licensed in the State of Hawai'i and shall be submitted for approval with the building plans. The director of public works may require additional information regarding the floodproofing design from the permit applicant and the applicant shall provide it. The information required may include the design data and calculations used in the floodproofing design, a detailed flood elevation study, a drainage report, and other information as determined necessary by the director of public works to establish compliance with the provisions of this chapter and to promote public welfare and safety.
- (b) Post-construction certification. Requirements for approval of the certificate of occupancy shall include the following items, as applicable,

and any additional items as required by the director of public works to promote public welfare and safety:

- (1) Elevation certification. The Federal Emergency Management Agency "Elevation Certificate," as amended, shall be completed and certified by a land surveyor, civil engineer, or architect currently ~~registered~~ licensed in the State of Hawai'i and submitted for approval with the application for the certificate of occupancy. The information certified within the "Elevation Certificate" shall be based on actual construction.
- (2) Compliance with other requirements of this chapter.

SECTION 11. Chapter 27, article 4, section 27-18, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-18. Standards for construction.**

Standards for construction within areas of special flood hazards and buffer zones are established as follows:

- (a) Anchoring.
  - (1) New construction, improvements to repetitive loss structures, and substantial improvements shall be adequately anchored to resist flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - (2) All manufactured homes, including mobile homes, shall meet all standards for structures.
- (b) Construction materials and methods.
  - (1) New construction, improvements to repetitive loss structures, and substantial improvement shall be constructed with materials and utility equipment resistant to flood damage.
  - (2) New construction, improvements to repetitive loss structures, and substantial improvement shall be constructed using methods and practices that minimize flood damage.
  - (3) New construction, improvements to repetitive loss structures, and substantial improvement shall be designed and constructed with electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities including, but not limited to, furnaces, heat pumps, ~~hot~~ water heaters, washers, dryers, elevator lift equipment, electrical junction boxes, circuit breaker boxes, and food freezers ~~that are~~ located above the base flood elevation plus any required freeboard.
  - (4) Within Zones V and VE, new construction, improvements to repetitive loss structures, and substantial improvements shall comply with the standards of section 27-23.
  - (5) Recreational vehicles placed on sites within Zones AH and AE on the FIRM shall be elevated and anchored or be on the site for less

than one hundred eighty consecutive days or be fully licensed and highway ready.

(c) ~~[Filling]~~ Encroachments.

(1) Within a floodway, [filling] encroachments (including fill), new construction, improvements to repetitive loss structures, substantial improvements, and other developments, shall be prohibited unless certified by a professional civil engineer [registered] licensed in the State of Hawai'i, with supporting data, that the encroachment will not cause any increase in base flood elevations during the occurrence of the base flood discharge.

(2) Require, until a regulatory floodway is designated, that no new construction, improvements to repetitive loss structures, substantial improvements, or other development (including fill), shall be permitted within Zones AE on the FIRM, unless demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood at any point.

~~[(2)]~~ (3) Within all zones of special flood hazards, but not including floodways, filling which would result in the blockage or impediment of flow and/or induce or aggravate flooding shall be prohibited unless certified by a professional civil engineer [registered] licensed in the State of Hawai'i, with supporting data, that the encroachment will not cause any increase in base flood elevations during the occurrence of the base flood discharge.

~~[(3)]~~ (4) Within floodway fringe areas, filling to elevate the lowest floor of a nonresidential structure may only be permitted where the structure:

(A) Is floodproofed so that below the base flood elevation plus any required freeboard the structure is watertight with walls substantially impermeable to the passage of water, and

(B) Has structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

~~[(4)]~~ (5) In Zones V and VE, filling [and the use of fill material for structural support of buildings] shall be prohibited.

(d) Elevation and floodproofing.

(1) Within Zones AE and AH:

(A) For residential new construction, improvements to repetitive loss structures, and substantial improvements[?], [The] the lowest floor shall be elevated to or above the base flood elevation plus a freeboard of at least one foot.

(B) For nonresidential new construction, improvements to repetitive loss structures, and substantial improvements[?],

[The] the lowest floor shall be elevated or floodproofed to or above the base flood elevation plus a freeboard of at least one foot. If the lowest floor is below the base flood elevation plus the required freeboard, then the structure together with attendant utility and sanitary facilities shall be designed, [and] constructed, and certified by a currently licensed professional engineer or architect in the State of Hawai'i such that:

- (i) The structure is watertight below the base flood elevation plus the required freeboard.
  - (ii) The walls are substantially impermeable to the passage of water.
  - (iii) The structural components are capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (C) Within Zone AH, new construction, improvements to repetitive loss structures, and substantial improvement shall be required to provide adequate drainage paths around structures on slopes to guide [flood waters] floodwaters around and away from proposed structures.
- (D) Fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a currently licensed professional engineer or architect or meet or exceed the following criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. Each opening must be on different sides of the enclosed area. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (2) Within Zone AO:
- (A) For [new] residential new construction, improvements to repetitive loss structures, and substantial improvements[:], [The] the lowest floor shall be elevated above the highest adjacent grade at least [as high as] one foot above the depth number specified in feet on the FIRM, or at least [two] three feet if no depth number is specified.
  - (B) For nonresidential new construction, improvements to repetitive loss structures, and substantial improvements[:],



~~[The]~~ the lowest floor shall be elevated or completely floodproofed above the highest adjacent grade at least [as high as] one foot above the depth number specified in feet on the FIRM, or at least [two] three feet if no depth number is specified. If the lowest floor is [below the elevation referenced in subsection 27-18(d)(2)(A)] to be completely floodproofed, then a currently licensed professional engineer or architect in the State of Hawai'i shall develop and/or review structural design, specifications and plans for construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice for the structure together with attendant utility and sanitary facilities[, shall be designed and constructed] such that:

- (i) The structure is watertight below the referenced flood elevation.
  - (ii) The walls are substantially impermeable to the passage of water.
  - (iii) The structural components are capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (C) New construction, improvements to repetitive loss structures, and substantial improvement shall be required to provide adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- (3) Within Zones V and VE: New construction, improvements to repetitive loss structures, and substantial improvement shall comply with the standards of section 27-23.
- (4) Within Zone A: New construction, improvements to repetitive loss structures, and substantial improvement shall comply with the standards of section 27-24.
- (5) Buffer zones: Areas bordering and within 50 feet of a special flood hazard areas with base flood elevations, depth numbers specified in feet on the FIRM or other areas that have been studied and identified with base flood elevations or depth numbers.
- (A) For residential new construction, improvements to repetitive loss structures, and substantial improvements, the lowest floor shall be elevated to the bordering base flood elevation or depth number plus a freeboard of at least one foot.
  - (B) For nonresidential new construction, improvements to repetitive loss structures, and substantial improvements, the lowest floor shall be elevated or floodproofed to the bordering base flood elevation or depth number plus a freeboard of at least one foot. If the lowest floor is below

the bordering base flood elevation or depth number plus the required freeboard, then a currently licensed professional engineer or architect in the State of Hawai'i shall develop and/or review structural design, specifications and plans for construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice for the structure together with attendant utility and sanitary facilities such that:

- (i) The structure is watertight below the bordering base flood elevation or depth number plus the required freeboard.
  - (ii) The walls are substantially impermeable to the passage of water.
  - (iii) The structural components are capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (C) New construction, improvements to repetitive loss structures, and substantial improvements, shall be required to provide a drainage path around and away from proposed structures.
- (D) When topographical or ground elevation data, submitted by a civil engineer or land surveyor currently licensed in the State of Hawai'i, shows that the proposed building site is higher than the elevation requirements of paragraph 27-18(d)(5)(A) and 27-18(d)(5)(B), the flood plain regulations of this chapter shall not be applicable.
- (e) Certification requirements. All new construction, improvements to repetitive loss structures, and substantial improvement within areas of special flood hazard and buffer zones shall be certified as required by the standards of section 27-17.

SECTION 12. Chapter 27, article 4, section 27-20, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

Section 27-20. Standards for subdivisions[-] and other developments.

- (a) All subdivisions and other developments within areas of special flood hazards and flood prone areas where special flood hazard areas have not been defined, water surface elevations have not been provided, and there is insufficient data to identify the floodway or coastal high hazard areas but there are verifiable physical indications that such hazards are present as determined by the flood plain administrator, shall:
- (1) Be consistent with the need to minimize flood damage;
  - (2) Have public utilities and facilities, such as sewer, gas, electrical, and water systems, located and constructed to minimize flood damage; and

- (3) Have adequate drainage provided to reduce exposure to flood damage.
- (b) All subdivision and other development applications shall identify the areas of special flood hazards and base flood elevations on the proposed site. If such information is not provided by the Flood Insurance Rate Maps, the director of public works may request and the applicant shall provide such information.
- (c) Finally approved subdivision [plans] plats for subdivisions within areas of special flood hazards shall provide base flood elevations within the lots.
- (d) ~~[When the floodplain administrator has designated areas of special flood hazards (A zones) by the publication of a community's FHBM or FIRM, but has neither produced water surface elevation data nor identified a floodway or coastal high hazard area, the floodplain administrator shall:~~
  - ~~(1) — Require permits for all proposed construction and other developments, including the placement of manufactured homes, within Zone A on the community's FHBM or FIRM;~~
  - ~~(2) — Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;~~
  - ~~(3) — Require that all new subdivision proposals and other proposed developments, greater than either fifty lots or five acres, include base flood elevation data within the proposal.]~~

All new subdivision proposals and other proposed developments within areas designated as Zone A or a flood prone area where special flood hazard areas have not been defined, water surface elevations have not been provided, and there is insufficient data to identify the floodway or coastal high hazard areas but the flood plain administrator has determined that there are verifiable physical indications that such hazards are present shall comply with the following:

- (1) Be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- (2) For all proposed developments and/or subdivisions greater than either fifty lots or five acres, the developer and/or subdivider shall include base flood elevation data within their proposal.
- (3) Comply with the requirements of section 27-24.
- (e) ~~[If fill is used to elevate the site of any lot in a subdivision above the base flood elevation, the original elevation of the site prior to filling and the final elevation of the site after filling shall be certified by a professional civil engineer or land surveyor currently registered in the State of Hawai'i.]~~  
All developments requiring a site drainage plan under section 25-2-72(3)

shall submit such a plan for review and approval by the director of public works. The site drainage plan shall comply with sections 27-20(a) and (b) and section 27-24, and shall include a storm water disposal system to contain run-off caused by the proposed development, within the site boundaries, up to the expected one-hour, ten year storm event, as shown in the Department of Public Works "Storm Drainage Standards," dated October 1970, or any approved revision, unless those standards specify a greater recurrence interval. The amount of expected runoff shall be calculated according to the Department of Public Works "Storm Drainage Standards," dated October 1970, or any approved revision, or by any nationally-recognized method meeting with the approval of the director of public works. Runoff calculations shall include the effects of all improvements.

- (f) Storm water shall be disposed into drywells, infiltration basins, or other approved infiltration methods. The development shall not alter the general drainage pattern above or below the development.

SECTION 13. Chapter 27, article 4, section 27-22, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-22. Standards for floodways.**

The floodway identified on the Flood [~~Rate~~] Insurance Rate Maps and located within areas of special flood hazard is the watercourse reserved to discharge the base flood. Since the floodway is an extremely hazardous area due to the velocity of [~~flood waters~~] floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (a) Encroachments, including fill, new construction, improvements to repetitive loss structures, substantial improvement, and other new development shall be prohibited unless certification and supporting data is provided by a [~~registered~~] licensed professional engineer or architect demonstrating that the encroachment will not cause any increase in base flood elevations during the occurrence of the base flood discharge.
- (b) If an encroachment within a floodway is allowed under the conditions of paragraph 27-22(a), all new construction, improvements to repetitive loss structures, substantial improvement and other proposed new development shall comply with all applicable flood hazard reduction provisions established in this chapter.
- (c) The following uses, not involving fill, shall be evaluated on a case-by-case basis to establish that the use does not cause any increase in base flood elevations:
- (1) Public and private outdoor nonstructural recreational facilities, lawn, garden, and play areas;
  - (2) Agricultural uses, including farm, grazing, pasture, and outdoor plant nurseries; and
  - (3) Drainage improvements, such as channels and stream crossings.

SECTION 14. Chapter 27, article 4, section 27-23, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-23. Standards for coastal high hazard areas.**

Coastal high hazard areas, more commonly known as tsunami inundation areas, are identified as Zone V or Zone VE on the Flood Insurance Rate Maps. Within coastal high hazard areas, the following standards shall apply:

- (a) All new construction, improvements to repetitive loss structures, and substantial improvements in a coastal high hazard area shall be constructed with materials and utility equipment resistant to flood damage and using methods and practices that minimize flood damage.
- (b) New construction, improvements to repetitive loss structures, and substantial improvement shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor, excluding the pilings and columns, is elevated to or above the base flood level. The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. The wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year.
- (c) New construction, improvements to repetitive loss structures, and other development shall be located on the landward side of the reach of mean high tide.
- (d) New construction, improvements to repetitive loss structures, and substantial improvement shall have the enclosed space, if any, below the lowest floor free of obstructions and constructed with breakaway walls as defined in section 27-12. Such enclosed space shall not be used for human habitation and will be useable solely for parking of vehicles, building access, or storage. Machinery and equipment which service the building, such as furnaces, air conditioners, heat pumps, hot water heaters, washers, dryers, elevator lift equipment, electrical junction and circuit boxes, and food freezers are not permitted in such enclosed spaces. The enclosed space must only be achieved with breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of twenty pounds per square foot may be permitted only if a ~~registered~~ licensed professional structural engineer certifies that the design proposed meets the following conditions:
  - (1) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

- (2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).
- (e) Fill shall not be used [~~for structural support of buildings~~].
- (f) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
- (g) All new construction, improvements to repetitive loss structures, development, and substantial improvement within coastal high hazard areas shall be certified as required by section 27-17.
- (h) Recreational vehicles placed on sites within Zones V and VE on the FIRM shall be elevated and anchored or be on the site for less than one hundred eighty consecutive days or be fully licensed and highway ready.

SECTION 15. Chapter 27, article 4, section 27-24, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-24. Standards for general floodplain.**

The general floodplain, identified as Zone A on the Flood Insurance Rate Maps, are areas of special flood hazards for which detailed engineering studies are not performed by the Federal [~~Insurance Administration~~] Emergency Management Agency to determine the base flood elevations and to identify the floodways.

- (a) To determine base flood elevations and the locations of floodways within the general floodplain, the director of public works may obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including information requested of a permit applicant.
- (b) [~~Subdivision~~] Development or subdivision proposals shall conform with the requirements of section 27-20.
- (c) The following information shall be provided by a permit applicant to the director of public works to evaluate the proposed construction or improvement site within a general floodplain area:
  - (1) Project location and site plan showing dimensions.
  - (2) Relationship to floodway and floodway fringes as determined by flood elevation study.
  - (3) Contour map showing the topography of existing ground based on elevation reference marks on flood maps. The scale and contours are to be appropriate to the work in question.
  - (4) Existing and proposed base flood elevations.
  - (5) Existing and proposed floodproofing and flood control measures.

The director of public works may waive informational requirements if the director of public works has sufficient information to make an evaluation

and determination regarding flood elevation or may request further information, including a detailed flood elevation study and a drainage report, to evaluate flood risks and determine the applicability of flood construction and development standards.

- (d) New construction, improvements to repetitive loss structures, and substantial improvements within the general floodplain shall satisfy the requirements set forth for Zones AE, AH, AO, or VE as is determined to be applicable by the director of public works based on base flood information and floodway data obtained through subsections 27-24(a) and 27-24(b).
- ~~[(e) The director of public works may waive informational requirements if the director of public works has sufficient information to make an evaluation and determination regarding flood elevation or may request further information, including a detailed flood elevation study and a drainage report, to evaluate flood risks and determine the applicability of flood construction and development standards.]~~
- ~~[(f)]~~ (e) All new construction, improvements to repetitive loss structures, development, and substantial improvement within the general floodplain shall be certified as required by section 27-17.
- ~~[(g)]~~ (f) All manufactured homes shall be elevated and anchored to resist flotation, collapse, or lateral movement.

SECTION 16. Chapter 27, article 4, section 27-25, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-25. Standards for ~~[development]~~ improvements adjacent to drainage facilities.**

New construction, improvements to repetitive loss structures, and substantial improvements proposed adjacent to drainage facilities outside of the special flood hazard areas identified on the Flood Insurance Rate Maps shall be subject to review and approval of the director of public works.

- (a) Upon request by the director of public works, further information concerning base flood elevation, floodways, surface water runoff, existing and proposed drainage patterns, and other information, including a detailed flood elevation study, drainage report, and findings and opinions by a ~~[registered]~~ licensed professional civil engineer, shall be provided to evaluate potential flooding.
- (b) The director of public works shall determine the applicability of the various development and construction standards provided in this chapter based upon information available from a Federal, State, or other source, including information provided by the permit applicant.
- (c) A drainage facility shall not be modified, constructed, lined, or altered in any way to accommodate the improvement without the approval of the director of public works.

SECTION 17. Chapter 27, article 4, section 27-26, Hawai'i County Code 1983 (2005

edition), as amended, is hereby amended to read as follows:

**Section 27-26. Storm drainage standards.**

The department of public works, County of Hawai'i's "Storm Drainage Standard," October 1970 edition, or latest revision, is incorporated into and made a part of this chapter. These standards have been prepared to guide County engineers and personnel, engineers for subdivision and other developers, consultants employed by the department of public works, and other interested parties in the general features required for the design of storm drainage facilities, preparation of flood hazard studies, and other related work in the County of Hawai'i.

SECTION 18. Chapter 27, article 5, section 27-27, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-27. Criteria for variances.**

A variance from this chapter may be issued by the director of public works only upon the applicant meeting the variance criteria of this section. The variance criterion [~~criteria~~] set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A properly issued variance is granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the County of Hawai'i to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements of this chapter are quite rare. The variance guidelines are detailed and contain multiple provisions that must be met before a variance can be properly granted. The following criterion [~~criteria~~] are designed to screen out those situations in which alternatives other than a variance are more appropriate:

- (a) Generally, variances may be issued for new construction, improvements to repetitive loss structures, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of articles 3 and 4 of this chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (b) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (c) Variances shall only be issued upon:
  - (1) A showing of good and sufficient cause. Under this [~~criteria~~]



criterion, the applicant must demonstrate that the variance request is for land which has physical characteristics so unusual that complying to flood requirements will create exceptional hardship to the applicant or surrounding landowners. The unique characteristic must pertain to the land itself and not the structure, its inhabitants, or the property owner.

Under this [eriteria] criterion, only exceptional instances should arise where the physical characteristics of properties create a hardship sufficient to justify granting a variance. Even in a fairly common situation where an undeveloped lot is surrounded by properties with structures built at grade and/or below flood levels, a variance cannot be justified since an applicant can erect the concerned structure on pilings, etc.;

- (2) A determination that failure to grant the variance would result in exceptional "hardship" (as defined in section 27-12) to the applicant. Under this [eriteria] criterion, the hardship that would result from failure to grant a requested variance must be exceptional, unusual, and peculiar to the property involved. Economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical disabilities, personal preferences, or the disapproval of one's neighbors cannot, generally, qualify as exceptional hardship. Under this [eriteria] criterion, for example, a member of a household has a physical disability and wants a variance to build the dwelling at grade or at a lower level for access purposes. A variance should not be issued because the owner can construct a ramp or elevator to meet flood requirements. Elevation will allow the infirm or persons with disabilities to be evacuated in the early stage of flooding, and, if there is insufficient warning or help in evacuating that person, then, in all likelihood, he can survive the flood by simply remaining in the home safely above the levels of [~~flood waters;~~ floodwaters;
- (3) A determination that the variance is the "minimum necessary" (as defined in section 27-12), considering the flood hazard, to afford relief. Under this [eriteria] criterion, the variance that is granted should be for the minimum deviation from the flood requirements that will still alleviate the hardship. In the case of variance to an elevation requirement, this does not mean approval to build at grade level or to whatever elevation an applicant proposes, but rather to a level that the director of public works determines will provide relief and preserve the integrity of the flood ordinance; and
- (4) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause "fraud or victimization" (as defined in section 27-12) of the public, or conflict with existing local laws or ordinances. Under this [eriteria]

criterion, an applicant must demonstrate that flood levels will not be raised above the base flood elevations.

- (d) Variances may be issued for new construction, improvements to repetitive loss structures, substantial improvement, and other proposed new development necessary for the conduct of a “functionally dependent use” (as defined in section 27-12) provided that the provisions of paragraphs 27-27(a) through 27-27(c) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (e) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (f) Variances may be issued for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- (g) Variances may be approved with conditions. Such conditions may include:
  - (1) Modification of the construction or substantial improvement, including the sewer and water facilities.
  - (2) Limitations on periods of use and operation.
  - (3) Imposition of operational controls, sureties, and deed restrictions.
  - (4) Requirements for construction of channels, dikes, ditches, swales, levees, and other flood-protective measures.
  - (5) Floodproofing measures designed consistent with the regulatory flood elevation, flood velocities, hydrostatic and hydrodynamic forces, and other factors associated with the base flood.
  - (6) Other conditions as may be required by the director of public works to promote public welfare and safety.

SECTION 19. Chapter 27, article 5, section 27-28, Hawai‘i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-28. Application for variance.**

An application for a variance shall be submitted to the director of public works, signed and stamped by a [~~registered~~] licensed professional engineer or architect, and shall include three sets of documents with the following information as may be applicable:

- (a) Plans and specifications showing the site and location; dimensions of all property lines and topographic elevation of the lot; existing and proposed structures and improvements, fill, storage area; locations and elevations of existing and proposed streets and utilities; floodproofing measures; relationship of the site to the location of the flood boundary; floodway; and the existing and proposed flood control measures and improvements.
- (b) Cross-sections and profile of the area and the regulatory flood elevations and profile based on elevation reference marks on flood maps.

- (c) Flood study and drainage report in areas where a study and report have not been reviewed and accepted by the County of Hawai‘i.
- (d) Description of surrounding properties and existing structures and uses and the effect of the regulatory flood on them caused by the variance.
- (e) Evaluation and supporting information for the variance with respect to the factors to be considered by the director of public works as listed in paragraphs 27-27(a) through 27-27(f).
- (f) An agreement that a covenant will be inserted in the deed and other conveyance documents of the property and recorded with the bureau of conveyances of the State of Hawai‘i, stating that the property is located in a flood hazard area subject to flooding and flood damage; that a flood hazard variance to construct a structure below the base flood elevation will result in increased flood insurance rates and increases flood risks to life and property; that the property owners will not file any lawsuit or action against the County of Hawai‘i for costs or damages or any claim; that the property owners will indemnify and hold harmless the County of Hawai‘i from liability when such loss, damage, injury, or death results due to any flood hazard variance and flooding of the property; and that upon approval of the variance, the covenants shall be fully executed and proof of recording with the bureau of conveyances shall be submitted to the director of public works prior to the issuance of a building permit.
- (g) Such other information as may be relevant and requested by the director of public works.

SECTION 20. Chapter 27, article 5, section 27-30, Hawai‘i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-30. Recording and reporting of variances.**

- (a) Any applicant to whom a variance is granted shall be given written notice over the signature of the director of public works that:
  - (1) The issuance of a variance to construct a structure at elevations below the base flood level will result in increased premium rates for flood insurance[;] up to amounts as high as \$25 for \$100 of insurance coverage;
  - (2) Such construction below the base flood level increases risks to life and property; and
  - (3) A copy of the notice shall be recorded with the State of Hawai‘i bureau of conveyances and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- (b) A record of all variance actions, including justifications for issuance of any variance[;] and written notices, shall be maintained by the director of public works. A report of the variances issued shall be included in the biennial report submitted to the [~~Federal Insurance Administration,~~] Federal Emergency Management Agency.

SECTION 21. Chapter 27, article 6, section 27-34, Hawai‘i County Code 1983 (2005

edition), as amended, is hereby amended to read as follows:

**Section 27-34. Administrative order.**

- (a) In lieu of or in addition to section [~~27-32,~~] 27-33, if the director of public works determines that any person, firm, or corporation is not complying with the requirements of this chapter or a notice of violation for a violation of this chapter, the director of public works may have the party responsible for the violation served, by certified mail or delivery, with an order pursuant to this section.
- (b) The order may require the party responsible for the violation to do any or all of the following:
  - (1) Correct the violation within the time specified in the order;
  - (2) Pay a civil fine of not less than \$500 and not more than \$1,000 in the manner, at the place, and before the date specified in the order;
  - (3) Pay a civil fine of not less than \$500 per day and not more than \$1,000 per day for each day that the violation persists, in the manner and at the time and place specified in the order.
- (c) The order shall become final thirty days from the date of service unless the party served requests a hearing under chapter 91, Hawai'i Revised Statutes. If a hearing is requested, no fine shall be imposed except upon completion of the hearing. In determining the amount of the fine, the director of public works shall consider the seriousness of the violations, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the fine on the violator, and such other considerations that have a bearing on the amount of the fine.
- (d) The director of public works may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director of public works need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine has not been paid.

SECTION 22. Chapter 27, article 6, section 27-37, Hawai'i County Code 1983 (2005 edition), as amended, is hereby amended to read as follows:

**Section 27-37. Removal of encroachment and/or obstruction notices.**

In addition to any other section, if any encroachment and/or obstruction exists, under, over or through any portion of a drainageway, floodway, levee system or watercourse within the County and the encroachment and/or obstruction is observed, or a complaint made to the department of public works of the County of Hawai'i, then the department of public works shall investigate and forthwith, give notice to the owner to remove the encroachment and/or obstruction in the manner provided in this [~~section-~~] article.

SECTION 23. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material and underscoring need not be included.

SECTION 24. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 25. This ordinance shall take effect upon its approval.

INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAII

Kona, Hawai'i  
Date of Introduction: June 1, 2007  
Date of 1st Reading: August 22, 2007  
Date of 2nd Reading: November 20, 2007  
Effective Date: November 30, 2007

REFERENCE: Comm. 176.171

OFFICE OF THE COUNTY CLERK  
County of Hawai'i  
Kona, Hawai'i

(Draft 5)

RECEIVED

Introduced By: Stacy K. Higa  
Date Introduced: June 1, 2007  
First Reading: August 22, 2007  
Published: September 3, 2007

REMARKS: June 1, 2007 - Amended to  
Draft 4 & Postponed  
July 10 & 25, 2007 - Postponed  
September 6, 2007 - Postponed  
November 7, 2007 - Amended to Draft 6 &  
held over pursuant to Council Rule 25(e)

Second Reading: November 20, 2007  
To Mayor: November 29, 2007  
Returned: November 30, 2007  
Effective: November 30, 2007  
Published: December 8, 2007

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson		X		
Naeole	X			
Pilago		X		
Yagong	X			
Yoshimoto	X			
	6	3	0	0

(Draft 6)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong			X	
Yoshimoto	X			
	8	0	1	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO  
FORM AND LEGALITY:

BRJA  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date 11/29/07

[Signature]  
COUNCIL CHAIRMAN  
[Signature]  
COUNTY CLERK

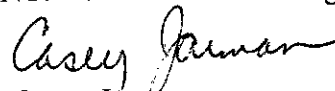
Bill No.: 51 (Draft 6)  
Reference: C-176.171/PWIRC-21  
Ord No.: 07 169

Approved/Disapproved this 30<sup>th</sup> day  
of November, 2007  
[Signature]  
MAYOR, COUNTY OF HAWAII

**Ordinance Number 07-169**

I hereby certify that the following Ordinance passed second and final reading at the meeting of the County Council on November 20, 2007, by vote, as listed below:

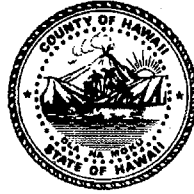
**Ordinance 07-169 (Bill 51, Draft 6):** An Ordinance Amending Chapter 27, Flood Control, Hawai'i County Code 1983 (2005 Edition), as Amended, Relating to Stormwater Management. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yoshimoto, and Chair Hoffmann – 8; NOES: None; ABSENT: Council Member Yagong – 1; EXCUSED: None.



Casey Jarman  
County Clerk

(Hawai'i Tribune-Herald – December 8, 2007)  
(West Hawai'i Today – December 8, 2007)

**Note:** The original Digest/Affidavit is attached.

BILL NO. 50ORDINANCE NO. 17 56

**AN ORDINANCE AMENDING CHAPTER 5, "BUILDING," AND CHAPTER 27, "FLOOD CONTROL," OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), TO COMPLY WITH NATIONAL FLOOD INSURANCE PROGRAM REGULATIONS.**

**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:**

**SECTION 1.** The purpose of this ordinance is to revise Chapters 5 and 27, to comply with current federal National Flood Insurance Program regulations found in the Code of Federal Regulations, Title 44, Parts 59 through 79, and to correct other inconsistencies found in Chapter 27.

**SECTION 2.** Chapter 5, article 2, division 2, section 5-19, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**"Section 5-19. Permit required.**

- (a) Except as otherwise provided in this chapter, [No] no person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, convert, or demolish any building or structure in the County, or cause the same to be done, without first obtaining a separate building permit for each building or structure from the building official; provided that one permit may be obtained for a dwelling and its accessories, such as fence, retaining wall, pool, storage and garage structures.
- (b) Permits will be further required for, but not limited to, the following:
- (1) All Television/Radio Communication Towers, etc., not regulated by the Public Utility Commission.
  - (2) Complete new installations of all solar water heating systems, or the complete replacement of existing system with all new components, or relocating of panels from roof to ground or vice versa, along with plumbing and electrical permits.
  - (3) Construction or renovation of Handicap Accessible routes from parking lot to building or from building to building on a lot.
  - (4) Water tanks or catchments intended for potable/household use, regardless of height or size. For additional requirements where water tank or catchment systems are used as means of fire protection, see Chapter 26 of the Hawai'i County Code.
  - (5) Retaining walls four feet and higher. Stepped or terraced retaining walls 8'-0" of each other are considered to be one wall when determining wall height.

[EXCEPTIONS: A permit is not required for:



- (1) ~~Work located primarily in a public way, public utility towers, bridges, and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.~~
- (2) ~~Temporary structures used during the construction of a permitted structure, temporary buildings, platforms, and fences used during construction or for props for films, television or live plays and performances.~~
- (3) ~~Re-roofing work with like material and installation of siding to existing exterior walls which will not affect the structural components of the walls for Groups R-3 and U Occupancies.~~
- (4) ~~Temporary tents or other coverings used for private family parties or for camping on approved campgrounds.~~
- (5) ~~Television and radio equipment (i.e. antennas, dishes) accessory to R-1 and R-3 Occupancies. Supports or towers for television and radio equipment 6'-0" or less in height.~~
- (6) ~~Awnings projecting up to 4 feet and attached to the exterior walls of buildings of Group R-3 or U Occupancy; provided that the awnings do not violate the provisions for "yards" in Chapter 25 (Zoning) of the Hawai'i County Code.~~
- (7) ~~Standard electroliers not over 35 feet in height above finish grade.~~
- (8) ~~Installation of wallpaper or wall covering which are exempted under the provisions of Section 801.1, Interior Finishes, Chapter 8, IBC.~~
- (9) ~~Repairs which involve only the replacement of component parts of existing work with similar materials for the purpose of maintenance, and which do not aggregate over \$4,000 in valuation in any twelve-month period, and do not affect any electrical or mechanical installations.~~
- (10) ~~Painting and decorating.~~
- (11) ~~Installation of floor covering.~~
- (12) ~~Cabinet work for R-3 Occupancy and individual units of R-1 and U Occupancies which are not regulated (under Section 310.3.12 Cooking Unit Clearances of this code). Wall mounted shelving not affecting fire resistance or structural members of wall. This is dealing with clearances to cabinets and range clearance to combustible.~~
- (13) ~~Work performed under the jurisdiction of Federal Government and/or located in Federal property.~~
- (14) ~~Swimming pools for one and two family dwelling units less than 24" in depth.~~
- (15) ~~Department of Transportation, Harbors, -- section 266-2, Hawai'i Revised Statutes.~~
- (16) ~~Fences 6'-0" or less in height.~~
- (17) ~~Detached structures for animal shelters, storage sheds, towers, and similar uses not more than 6'-0" in height.~~
- (18) ~~One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed a) 120 square feet (11 m<sup>2</sup>); b) does not exceed 600 square feet for agricultural zoned lands. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).~~
- (19) ~~Detached decks or platforms less than 30" in height above grade. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).~~

- (20) ~~Playground equipment, excluding assembly or similar waiting areas.~~
- (21) ~~Replacement of solar water heating components (i.e. panels, tanks) in the same location and of the same type, however; plumbing and/or electrical permits required.~~
- (22) ~~Wells and Reservoirs—Hawai‘i Revised Statutes, chapter 178. Check requirements of other governmental agencies.~~
- (23) ~~Work performed under the jurisdiction or control of the State Department of Accounting and General Services (DAGS).~~
- (24) ~~Water tanks or catchment systems 5,000 gallons or less in size with a height to width ratio of not more than 2:1, to be used strictly for non-potable/household purposes such as agriculture, irrigation or stock, and that are independent of the potable/household system.]”~~

**SECTION 3.** Chapter 5, article 2, division 2, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by adding a new section to be designated section 5-19.1, and to read as follows:

**“Section 5-19.1. Permit not required.**

**(a) A permit is not required for:**

- (1) Work located primarily in a public way, public utility towers, bridges, and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.**
- (2) Temporary structures used during the construction of a permitted structure, temporary buildings, platforms, and fences used during construction or for props for films, television or live plays and performances.**
- (3) Re-roofing work with like material and installation of siding to existing exterior walls which will not affect the structural components of the walls for Groups R-3 and U Occupancies.**
- (4) Temporary tents or other coverings used for private family parties or for camping on approved campgrounds.**
- (5) Television and radio equipment (i.e. antennas, dishes) accessory to R-1 and R-3 Occupancies. Supports or towers for television and radio equipment 6'-0" or less in height.**
- (6) Awnings projecting up to 4 feet and attached to the exterior walls of buildings of Group R-3 or U Occupancy; provided that the awnings do not violate the provisions for “yards” in Chapter 25 (Zoning) of the Hawai‘i County Code.**
- (7) Standard electroliers not over 35 feet in height above finish grade.**
- (8) Installation of wallpaper or wall covering which are exempted under the provisions of Section 801.1, Interior Finishes, Chapter 8, IBC.**
- (9) Repairs which involve only the replacement of component parts of existing work with similar materials for the purpose of maintenance, and which do not aggregate over \$4,000 in valuation in any twelve-month period, and do not affect any electrical or mechanical installations.**
- (10) Painting and decorating.**

- (11) Installation of floor covering.
- (12) Cabinet work for R-3 Occupancy and individual units of R-1 and U Occupancies which are not regulated (under Section 310.3.12 Cooking Unit Clearances of this code). Wall mounted shelving not affecting fire resistance or structural members of wall. This is dealing with clearances to cabinets and range clearance to combustible.
- (13) Work performed under the jurisdiction of Federal Government and/or located in Federal property.
- (14) Swimming pools for one and two-family dwelling units less than 24" in depth.
- (15) Department of Transportation, Harbors, - section 266-2, Hawai'i Revised Statutes.
- (16) Fences 6'-0" or less in height.
- (17) Detached structures for animal shelters, storage sheds, towers, and similar uses not more than 6'-0" in height.
- (18) One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed a) 120 square feet (11 m<sup>2</sup>); b) does not exceed 600 square feet for agricultural zoned lands. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).
- (19) Detached decks or platforms less than 30" in height above grade. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).
- (20) Playground equipment, excluding assembly or similar waiting areas.
- (21) Replacement of solar water heating components (i.e. panels, tanks) in the same location and of the same type, however; plumbing and/or electrical permits required.
- (22) Wells and Reservoirs – Hawai'i Revised Statutes, chapter 178. Check requirements of other governmental agencies.
- (23) Work performed under the jurisdiction or control of the State Department of Accounting and General Services (DAGS).
- (24) Water tanks or catchment systems 5,000 gallons or less in size with a height to width ratio of not more than 2:1, to be used strictly for non-potable/household purposes such as agriculture, irrigation or stock, and that are independent of the potable/household system.

(b) Any person who is undertaking an action that may be an exception to the requirement for a building permit must obtain a certification from the building official that the proposed action is:

- (1) An exception to the requirement for a building permit; and
- (2) Complies with chapter 27."

**SECTION 4.** Chapter 27, article 2, section 27-5, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**“Section 27-5. Applicability.**

**[(a)]** This chapter shall apply to all areas of special flood hazards identified by the Federal Emergency Management Agency in a scientific and engineering report entitled “Flood

Insurance Study,” dated April 2, 2004, with accompanying Flood Insurance Rate Maps and all future changes, revisions and amendments to these documents, and shall apply to all areas bordering identified special flood hazard areas, and all other areas outside the identified special flood hazard areas encompassing and adjacent to a river, stream, stormwater channel, outfall area, or other inland water or drainage facility determined by the director of public works to be subject to flood hazards. The special flood hazard areas are as follows:

- (1) Floodway fringe - Zones AE, AH, and AO.
- (2) Floodway.
- (3) Coastal high hazard (tsunami) - Zones V and VE.
- (4) General floodplain - Zone A.
- (5) Land adjacent to drainage facilities, and Zone A99.

~~[(b) This chapter shall not apply to:~~

- ~~(1) Any building permit lawfully issued prior to May 5, 1982 or building permit application properly filed and accepted for review prior to May 5, 1982, provided that approval was obtained without any significant changes in plans or specifications made after May 5, 1982.~~
- ~~(2) Roadway and site improvements for subdivisions for which tentative approval had been granted prior to May 5, 1982 and where roadway and site improvement construction and grading plans had received all necessary agency approvals by May 5, 1982.~~
- ~~(3) Carnivals, lū‘aus, fairs, and camping tents of a temporary nature which are not in a floodway.~~
- ~~(4) Nonfenced, at grade outdoor swimming pools.~~
- ~~(5) Signs which are not in a floodway.~~
- ~~(6) Demolition.]”~~

**SECTION 5.** Chapter 27, article 2, section 27-12, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending the definition of “Flood, flooding, or floodwater” to read:

““Flood, flooding, or floodwater” means:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (A) The overflow of inland or tidal waters;
  - (B) The unusual and rapid accumulation ~~[of]~~ or runoff ~~[of]~~ of surface waters from any source; or
  - (C) Mudslides (i.e., mudflows) which are approximately caused by flooding as defined in paragraph ~~[(A)(ii)]~~ (1)(B) of this definition and are akin to a river of ~~[water]~~ liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; ~~[and]~~ or
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding

anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(A) of this definition.”

**SECTION 6.** Chapter 27, article 2, section 27-12, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by adding a new definition to be appropriately inserted and to read as follows:

“Expansion to an existing manufactured home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).”

**SECTION 7.** Chapter 27, article 3, section 27-14, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**“Section 27-14. Director of public works approval.**

No building permit, certificate of occupancy, or grading permit shall be issued, no structure shall be occupied, no exception to chapter 5, the building code, shall be certified, and no development or subdivision shall be approved in an area of special flood hazard as determined by the director, pursuant to section 27-16, without the approval of the director [~~of public works~~] with respect to compliance with the provisions of this chapter.”

**SECTION 8.** Chapter 27, article 3, section 27-16, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**“Section 27-16. Duties and responsibilities of the floodplain administrator.**

The floodplain administrator, with the cooperation and assistance of other County departments, shall administer this chapter. The duties and responsibilities of the floodplain administrator shall include, but not be limited to:

~~[(a)]~~(1) Permit review.

- ~~[(1)]~~(A) All building permits, certificates of occupancy, grading permits, and development or subdivision proposals shall be reviewed to determine whether the requirements of this chapter have been satisfied;
- ~~[(2)]~~(B) All other development permits referred by other governmental departments and agencies shall be reviewed for consistency with the requirements of this chapter;
- ~~[(3)]~~(C) All permits and proposals shall be reviewed to determine that the proposed building site is reasonably safe from flooding;

- ~~(4)~~(D) For proposed building sites in flood-prone areas where special flood hazard areas have not been defined, water surface elevations have not been provided, and there is insufficient data to identify the floodway or coastal high hazard areas but the flood plain administrator has determined that there are verifiable physical indications that such hazards are present, all new construction, improvements to repetitive loss structures and substantial improvements (including the placement of manufactured homes) shall be:
- ~~(A)~~(i) Designed and adequately anchored to prevent flotation, collapse, or lateral movement;
  - ~~(B)~~(ii) Constructed of flood-resistant materials;
  - ~~(C)~~(iii) Constructed by methods and practices that minimize flood damage; and
  - ~~(D)~~(iv) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - ~~(E)~~(v) Be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
  - ~~(F)~~(vi) New and replacement utilities shall comply with the requirements of section 27-19; and
- ~~(5)~~(E) All permits shall be reviewed to determine that the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood at any point.
- ~~(b)~~(2) Information to be maintained.
- ~~(1)~~(A) The Flood Insurance Study and Flood Insurance Rate Maps for the County of Hawai'i;
  - ~~(2)~~(B) The certification of lowest floor elevation;
  - ~~(3)~~(C) The certification of floodproofing for spaces below the base flood elevation;
  - ~~(4)~~(D) The certification of final pad elevation where a site is filled above the base flood elevation;
  - ~~(5)~~(E) The certification that an encroachment in the floodway will not result in any increase in flood levels during base flood discharge; and
  - ~~(6)~~(F) The certification of elevation and structural support for structures in the coastal high hazard area.
- ~~(c)~~(3) Interpretation of maps.  
The director of public works shall make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). A person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in article 5.
- ~~(d)~~(4) Change in base flood elevations.

Whenever base flood elevations increase or decrease or result in a mappable alteration of the boundaries of any special flood hazard area, as a result of physical changes affecting flooding conditions, as soon as practical, but no later than six months after the date such information becomes available, the floodplain administrator shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data through the Letter of Map Revision process. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

~~[(e)]~~(5) Use of other base flood data.

When base flood elevation data has not been provided in accordance with section 27-6, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal or State agency, or other source, in order to administer article 4. Any such information shall be submitted to the County of Hawai'i for ~~[adoption.]~~ approval.

~~[(f)]~~(6) Whenever a watercourse is to be altered or relocated:

~~[(1)]~~(A) Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained;

~~[(2)]~~(B) For riverine situations, notify the State of Hawai'i department of land and natural resources (commission on water resource management) and all adjacent property owners, prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

~~[(3)]~~(C) Whenever a proposed alteration or relocation occurs that would significantly change the base flood elevation or result in a mappable alteration of the boundaries of any special flood hazard area, technical and scientific data through the Conditional Letter of Map Revision (CLOMR) shall be submitted to and approved by the Federal Emergency Management Agency. Such a submission is necessary so that upon completion of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data. Work to be performed under an approved Conditional Letter of Map Revision (CLOMR) shall be subject to the following:

~~[(A)]~~(i) Work shall not begin on any on-site development affecting or impacting the floodplain until an approved Conditional Letter of Map Revision is received from the Federal Emergency Management Agency;

~~[(B)]~~(ii) Within sixty days of receiving final approval from the director ~~[of public works]~~ for the completion of the alteration or relocation of a watercourse, the request for a Letter of Map Revision (LOMR), and all other information required by the Letter of Map Revision (LOMR) process shall be submitted to the flood plain administrator.

~~[(g)]~~(7) Take action to remedy violations of this chapter as specified in article 6."

**SECTION 9.** Chapter 27, article 4, section 27-17, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**"Section 27-17. Certification standards.**

(a) Pre-construction and post-construction certification of elevation and floodproofing of new construction, improvements to repetitive loss structures, development, and substantial improvements within areas of special flood hazards shall be submitted to the director of public works and shall be maintained as a matter of public record.

~~(a)~~(b) Pre-construction certification.

Requirements for approval of the building permit shall include the following items, as applicable, and any additional items as required by the director of public works to promote public welfare and safety:

(1) Certification of building plans.

Each set of building plans shall be certified by a structural engineer or architect, currently licensed in the State of Hawai'i, to be in compliance with the requirements of this chapter.

(2) Elevation certification on building plans.

The elevation of the lowest floor shall be certified on each set of the building plans by [a] an architect, civil engineer, or land surveyor currently licensed in the State of Hawai'i.

(3) Special flood hazards area certification.

The County of Hawai'i "Special Flood Hazard Area Certification" form, as amended, shall be completed and certified by a structural engineer or architect currently licensed in the State of Hawai'i. The completed "Special Flood Hazard Certification" shall be submitted for approval with the building plans.

(4) Floodproofing certification.

For all new nonresidential construction and substantial improvement with enclosed areas below the base flood elevation, the Federal Emergency Management Agency "Floodproofing Certificate" form, as amended, shall be completed and certified by ~~[aa]~~ a civil engineer or architect, currently licensed in the State of Hawai'i and shall be submitted for approval with the building plans. The director of public works may require additional information regarding the floodproofing design from the permit applicant and the applicant shall provide it. The information required may include the design data and calculations used in the floodproofing design, a detailed flood elevation study, a drainage report, and other information as determined necessary by the director of public works to establish compliance with the provisions of this chapter and to promote public welfare and safety.

~~(b)~~(c) Post-construction certification.

Requirements for approval of the certificate of occupancy shall include the following items, as applicable, and any additional items as required by the director of public works to promote public welfare and safety:

(1) Elevation certification. The Federal Emergency Management Agency "Elevation Certificate," as amended, shall be completed and certified by a land surveyor, civil engineer, or architect currently licensed in the State of Hawai'i and



submitted for approval with the application for the certificate of occupancy. The information certified within the "Elevation Certificate" shall be based on actual construction.

- (2) Compliance with other requirements of this chapter."

**SECTION 10.** Chapter 27, article 4, section 27-23, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

**"Section 27-23. Standards for coastal high hazard areas.**

Coastal high hazard areas~~[, more commonly known as tsunami inundation areas,]~~ are identified as Zone V or Zone VE on the Flood Insurance Rate Maps. Within coastal high hazard areas, the following standards shall apply:

- ~~[(a)]~~(1) All new construction, improvements to repetitive loss structures, and substantial improvements in a coastal high hazard area shall be constructed with materials and utility equipment resistant to flood damage and using methods and practices that minimize flood damage.
- ~~[(b)]~~(2) New construction, improvements to repetitive loss structures, and substantial improvement shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor, excluding the pilings and columns, is elevated to or above the base flood level. The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. The wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year.
- ~~[(c)]~~(3) New construction, improvements to repetitive loss structures, and other development shall be located on the landward side of the reach of mean high tide.
- ~~[(d)]~~(4) New construction, improvements to repetitive loss structures, and substantial improvement shall have the enclosed space, if any, below the lowest floor free of obstructions and constructed with breakaway walls as defined in section 27-12. Such enclosed space shall not be used for human habitation and will be useable solely for parking of vehicles, building access, or storage. Machinery and equipment which service the building, such as furnaces, air conditioners, heat pumps, hot water heaters, washers, dryers, elevator lift equipment, electrical junction and circuit boxes, and food freezers are not permitted in such enclosed spaces. The enclosed space must only be achieved with breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of twenty pounds per square foot may be permitted only if a licensed professional structural engineer certifies that the design proposed meets the following conditions:

- ~~[(4)]~~(A) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
- ~~[(2)]~~(B) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).
- ~~[(e)]~~(5) Fill shall not be used for structural support of buildings.
- ~~[(f)]~~(6) Man-made alteration of sand dunes and mangroves which would increase potential flood damage is prohibited.
- ~~[(g)]~~(7) All new construction, improvements to repetitive loss structures, development, and substantial improvement within coastal high hazard areas shall be certified as required by section 27-17.
- ~~[(h)]~~(8) Recreational vehicles placed on sites within Zones V and VE on the FIRM shall be elevated and anchored or be on the site for less than one hundred eighty consecutive days or be fully licensed and highway ready.”

**SECTION 11.** Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

**SECTION 12.** Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION 13.** This ordinance shall take effect upon approval.

INTRODUCED BY:

*A. A. B/R*  
 COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i  
 Date of Introduction: July 18, 2017  
 Date of 1st Reading: July 18, 2017  
 Date of 2nd Reading: August 2, 2017  
 Effective Date: August 14, 2017

OFFICE OF THE COUNTY CLERK  
 County of Hawai'i  
 Hilo, Hawai'i

COUNTY CLERK  
 COUNTY OF HAWAII

2017 AUG 14 PM 2:45

Introduced By: Jennifer Ruggles (B/R)  
 Date Introduced: July 18, 2017  
 First Reading: July 18, 2017  
 Published: July 29, 2017

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Second Reading: August 2, 2017  
 To Mayor: August 10, 2017  
 Returned: August 14, 2017  
 Effective: August 14, 2017  
 Published: August 26, 2017

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kanuha	X			
Lee Loy	X			
O'Hara	X			
Poindexter	X			
Richards	X			
Ruggles	X			
	9	0	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kanuha	X			
Lee Loy	X			
O'Hara	X			
Poindexter			X	
Richards	X			
Ruggles	X			
	8	0	1	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

*Atene J. Poindexter*

COUNCIL CHAIRPERSON

*Jennifer Ruggles*

COUNTY CLERK

~~Approved~~ Disapproved this 14<sup>th</sup> day  
 of August, 20 17

*Harry Keim*  
 MAYOR, COUNTY OF HAWAII

Bill No.: 50  
 Reference: C-334/PWPRC-14  
 Ord No.: 17 56

**Ordinance No. 1091, A Bill for An Ordinance to Amend Chapter 15, Article 1,  
Kaua'i County Code 1987, As Amended, Relating to Floodplain Management**

Chapter 15 General Provisions Relating to Building and Construction  
Regulations, Article 1. Floodplain Management

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 15, ARTICLE 1,  
KAUA'I COUNTY CODE 1987, AS AMENDED,  
RELATING TO FLOODPLAIN MANAGEMENT**

---

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Federal Emergency Management Agency has identified special flood hazard areas within the County of Kaua'i and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and the impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

The County of Kaua'i was accepted for participation in the National Flood Insurance Program on November 4, 1981 and the Council of the County of Kaua'i desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Section 59 and 60, necessary for such participation.

The Council of the County of Kaua'i finds that there is a need to amend the Kaua'i County Code 1987, as amended, to maintain good standing in the National Flood Insurance Program.

SECTION 2. Chapter 15, Article 1, Floodplain Management, Kaua'i County Code 1987, as amended, is hereby deleted in its entirety and replaced with the following:

**"Article 1. Floodplain Management**

**Sec. 15-1.1 Legislative Findings of Fact, Purpose and Objectives.**

(a) Findings of Fact. Certain areas of the County are subject to periodic flooding caused by heavy rain storms, high wave action, and tsunamis which result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(b) Statement of Purpose. It is the purpose of this Article to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities located in areas of special flood hazard;
- (6) To help maintain a stable tax base by minimizing future flood loss;
- (7) To assist in notifying potential buyers that property is in an area of special flood hazard; and
- (8) To [insure] ensure that those who occupy areas of special flood hazard assume responsibility for their actions.

(c) Methods of Reducing Flood Losses. In order to accomplish its purpose, this Article includes methods and provisions for:

- (1) Requiring that facilities be protected to minimize flood damage at the time of initial construction;
- (2) Controlling filling, grading, dredging, and other development which may increase flood damage;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters; and
- (4) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

#### **Sec. 15-1.2 General Provisions.**

(a) Statutory Authority. This Article is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (Public Laws 90-418 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended. In addition, the Legislature of the State of Hawai'i has in Hawai'i Revised Statutes Section 46-1.5 and Section 46-11 authorized the counties to enact ordinances to promote health and safety and to qualify,

participate, and apply for flood insurance coverage under the National Flood Insurance Program.

(b) Lands Subject to this Article. This Article shall apply to all areas of special flood hazards identified by the Federal [Insurance Administration] Emergency Management Agency in a scientific and engineering report entitled “The Flood Insurance Study for [the County of Kaua‘i” with accompanying Flood Insurance Rate Maps with panel numbers 0030E, 0035E, 0055E, 0060E, 0065E, 0080E, 0090E, 0095E, 0110E, 0120E, 0130E, 0145E, 0185E, 0192E, 0194E, 0201E, 0202E, 0203E, 0204E, 0210E, 0211E, 0212E, 0213E, 0214E, 0232E, 0251E, 0252E, 0253E, 0254E, 0256E, 0257E, 0258E, 0259E, 0267E, 0286E, 0287E, 0288E, 0289E, 0291E, 0292E, 0293E, 0294E, 0307E, 0309E, 0311E, 0312E, 0313E, 0314E, 0317E, 0318E, 0326E, 0327E, 0328E, 0329E, 0336E, 0352E, 0356E dated September 16, 2005] Kaua‘i County, Hawai‘i,” dated February 26, 2021, with accompanying Flood Insurance Rate Maps and any subsequent revisions and amendments to such study and maps, which are adopted by reference as a part of this Article; and lands outside the identified special flood hazard areas encompassing and adjacent to a river, stream, stormwater channel, outfall area, or other inland water or drainage facility determined by the County Engineer to be subject to special flood hazards. The different special flood hazard areas are as follows:

- (1) Flood fringe—AE, AO, and AH zones.
- (2) Floodway.
- (3) Coastal high hazard [(tsunami)] —VE zones.
- (4) General floodplain—A, X and D zones.
- (5) Land adjacent to drainage facility.

(c) [Compliance; Effective Date.] Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Article and other applicable regulations. [This Article shall take effect on September 16, 2005.]

(d) Legislative History and Effective Date. This Article was originally adopted by Ord. No. 155 on January 7, 1972, and amended in 1976, 1981, 1987, 1993, 1995, 2002, and 2005. Amendments adopted in 2021 shall take effect on \*\*\*.

[(d)] (e) Other Laws and Regulations. All construction and improvements subject to this Article shall comply with other applicable laws and regulations including, but not limited to, the Comprehensive Zoning Ordinance, Building Code, Electrical Code, Plumbing Code, Subdivision Ordinance, and Sediment and Erosion Control Ordinance. This Article, designed to reduce flood losses, shall take precedence over any less restrictive, conflicting laws, ordinances, and regulations.

[(e)] (f) Interpretation. In the interpretation and application of this Article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the County; and
- (3) Deemed neither to limit nor repeal any other powers granted under State statutes.

[(f)] (g) Warning and Disclaimer of Liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the County of Kaua'i, any officer or employee thereof, or the Federal [Insurance Administration] Emergency Management Agency, for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

#### **Sec. 15-1.3 Definitions.**

Unless plainly evident from the context that a different meaning is intended, the words and terms used herein are only applicable to this Article and defined as follows:

["Administrator" means the Federal Insurance Administrator.]

"Alteration of a watercourse" means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood."

"Area of special flood hazard" is the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year or determined by the County Engineer in areas adjacent to drainage facilities not identified in the FIRM. The areas may be designated in the FIRM as Zones A, AO, AH, AE, or VE. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard."

"Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, otherwise commonly referred to as the 100-year flood.



“Base flood elevation” means the water surface elevation of the base flood.

“Basement” means the portion of a building having its floor subgrade (below ground level) on all sides.

“Breakaway walls” mean any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which are not part of the structural support of the building and which are so designed as to breakaway, under abnormally high tides or wave action, without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

“Coastal high hazard area” means the area subject to high velocity waters including but not limited to coastal and tidal inundation or tsunamis. The area is designated on a FIRM as Zone VE.

“County” means the County of Kaua‘i.

“County Engineer” means the County Engineer of the County of Kaua‘i or his/her authorized representative.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Expansion to an existing manufactured home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Federal Emergency Management Agency (FEMA)” means the federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from overflow of inland or tidal water resulting from any source, such as tsunamis, or the unusual and rapid accumulation of runoff or surface waters from any source.

“Flood fringe area” means the portion of the floodplain outside the floodway, designated as AE, AO, and AH zones on the FIRM.

“Flood insurance rate map (FIRM)” means the official map on which the Federal [Insurance Administration] Emergency Management Agency has

delineated the areas of special flood hazards, risk premium zones applicable, base flood elevations, and the floodway.

“Flood insurance study” means the official report provided by the Federal [Insurance Administration] Emergency Management Agency that includes flood profiles, the FIRM, and the water surface elevation of the base flood.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than [one (1) foot] a designated height.

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

“General floodplain area” means the area consisting of the approximate floodplain area as delineated on the flood maps, identified as A, D and X zones on the FIRM, where detailed engineering studies have not been conducted by the Federal [Insurance Administration] Emergency Management Agency to delineate the flood elevations and floodway.

“Historic structure” means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(A) By an approved state program as approved by the Secretary of the Interior or

(B) Directly by the Secretary of the Interior in states without approved programs.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

“New construction” for floodplain management purposes means structures for which the start of construction commenced on or after the effective date of November 4, 1981, and includes any subsequent improvements to such structures.

“New manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

“Recreational vehicle” means a vehicle which is: (1) built on a single chassis; (2) four hundred (400) square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

“Repetitive loss structure” means a home or business or structure damaged by floods two (2) times in the past ten (10) years, where the cost of fully repairing the flood damage to the building, on the average, equaled or exceeded twenty-five percent (25%) of its market value at the time of each flood.

“Special flood hazard area” means the same as “area of special flood hazard.”

“Start of construction” (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) includes substantial improvement, and means the date the building permit was

issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building and includes gas or liquid storage tanks that is principally above ground and include manufactured homes such as mobile homes.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

“Substantial improvement” means any [cumulative series] combination of repairs, reconstruction, improvements, or additions or other improvements to a structure over a ten (10) year period, where the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the first improvement during that ten (10) year period. [For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.] If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The [value] cost of any substantial improvement, including the cost to repair damage to pre-damage condition, shall be reviewed and determined by the County Engineer or his/her authorized representative. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

“Tsunami” means a great sea wave produced by submarine earth movement or volcanic eruption.

“Violation” means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this Floodplain Management Ordinance is presumed to be in violation until such time as that documentation is provided.

“Watercourse” means a river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

**Sec. 15-1.4 Administration.**

(a) Permits for All Proposed Construction or Other Development in the County. Permits for all proposed construction or other development in the County, including building permits, certificates of occupancy, grading permits, subdivision approvals, and use, zoning and shoreline management area (SMA) permits, are required so that it may be determined whether such construction or other development is proposed within flood-prone areas. No building permit, certificate of occupancy, or grading permit shall be issued or subdivision shall be approved without the approval of the County Engineer County Engineer [or his/her authorized representative, designated as the Floodplain Manager of the County of Kaua‘i], with respect to compliance with the provisions of this Article.

(b) Certificate of Occupancy Required in Special Flood Hazard Areas. Notwithstanding [Section 307 of the County] the applicable requirements of the Building Code, a certificate of occupancy shall be required before any new construction or substantial improvement in the special flood hazard areas may be used or occupied.

(c) County Engineer. The County Engineer and his or her authorized representative, with the cooperation and assistance of other County departments, shall administer the provisions of this Article.

(d) Duties and Responsibilities of the County Engineer. The duties and responsibilities of the County Engineer shall include but not be limited to:

(1) Permit Review.

(A) Review all building permits, certificates of occupancy, grading permits, and subdivision proposals to determine whether the requirements of this Article have been satisfied.

(B) See that all other required State and Federal permits have been obtained, including permits pursuant to Section 404 of the Clean Water Act.

(C) Review permits and proposals to determine that the site is reasonably safe from flooding.

(D) Review permits and proposals to determine that the proposed construction or development will not decrease the flood-carrying capacity of the area of special flood hazard.

(2) Information to be Obtained and Maintained by the [Floodplain Manager.] County Engineer. Obtain and maintain for public inspection:

(A) The flood insurance study and flood insurance rate maps for the County;

(B) The certified elevation of the lowest floor;

(C) The floodproofing certification for spaces [below the base flood level] in nonresidential structures that are designed to be dry floodproofed in accordance with this Section;

(D) The certified final pad elevation where the site is filled above the base flood level;

(E) The certification that an encroachment in the floodway will not result in any increase in flood levels during base flood discharge; [and]

(F) The assurance that the flood carrying capacity of altered or relocated watercourses will be maintained; and

~~(F)~~ (G) The certification of elevation and certification of the design of structural support for structures in the coastal high hazard (i.e., tsunami) area. This certificate of elevation shall state the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement.

(3) Interpretation of Maps. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards.

(4) Use of Other Base Flood Data. When base flood elevation data has not been provided by the Federal [Insurance Administration,] Emergency Management Agency, the County Engineer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from Federal, State, or other sources, in order to administer this Article.

(5) Submit New Technical Data. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify the [administrator] Federal Emergency Management Agency of the changes by submitting technical or scientific data through the letter of map revision process.

### **Sec. 15-1.5 Construction and Development Standards.**

(a) Flood Fringe. The flood fringe areas are identified on the FIRMs as AE, AO, and AH zones.

(1) Anchoring. All new construction, repetitive loss structures, and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) Construction Materials and Methods.

(A) All new construction, repetitive loss structures, and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(B) All new construction, repetitive loss structures, and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(C) All electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during the conditions of flooding.

(3) Elevation and Floodproofing.

(A) Residential Structures. All new construction, repetitive loss structures, and substantial improvements of residential structures within A1-30, AE, AO, and AH zones on the community's FIRM shall have the lowest floor (including basements) elevated to or above the base flood level. Fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two (2)

openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(B) Nonresidential Structures. All new construction, repetitive loss structures, and substantial improvements of nonresidential structures shall either:

(i) Elevate the lowest floor, including basement, to or above the base flood elevation; or

(ii) Together with attendant utility and sanitary facilities be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(C) All manufactured homes, [such as mobile homes, must be elevated above the base flood elevation.] must be installed on a permanent foundation and the lowest floors shall be elevated to or above the base flood elevation plus one (1) foot. Manufactured homes shall comply with the anchoring, construction materials and methods, machinery and equipment requirements of this Section and fully enclosed areas below the lowest floor shall be useable solely for parking of vehicles, building access, or storage and shall comply with the applicable provisions in this Section for flood openings.

(D) No machinery or equipment which service a building such as furnaces, air conditioners, heat pumps, hot water heaters, washers, dryers, elevator lift equipment, electrical junction and circuit breaker boxes, and food freezers, are permitted below the base flood elevation; and all interior wall, floor and ceiling materials located below the base flood elevation must be unfinished and resistant to flood damage; and the walls of any enclosed area below the base flood elevation must be constructed in a manner to prevent flotation, collapse, lateral movement of the structure.

(E) Building Height. Notwithstanding the maximum building height limitations as stated in overall building and wall plate height, provided in Paragraph [8-3.7(b)(1)] 8-4.5(b) for single-family detached and attached residential dwellings under the Comprehensive Zoning Ordinance and Paragraph 10-2.4(e)(1) for all structures under the North Shore Development Plan



Ordinance, the maximum building height in the flood fringe area shall be as follows:

(i) Within the North Shore Planning Area. No structure shall be higher than twenty-five (25) feet from ground level or the base flood elevation plus fifteen (15) feet, whichever is greater at the site, unless a greater height is authorized by the Planning Commission pursuant to a use permit after review and recommendation by the North Shore Improvement Committee.

(ii) Single-Family Dwellings Outside the North Shore Special Planning Area. No single-family detached and attached dwellings outside the North Shore special planning area shall be higher than thirty (30) feet from ground or the base flood elevation plus fifteen (15) feet, whichever is greater at the site unless otherwise permitted by the Planning Commission.

(4) Water and Sewer.

(A) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters.

(B) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(5) Certification by Engineer or Architect. Building plans for new construction, repetitive loss structures, and substantial improvements shall be certified by a registered professional structural engineer or architect that the new construction is designed in compliance with the requirements of this Section. For nonresidential buildings that are dry floodproofed in accordance with this Section, the certification shall state that the design and methods of construction are in accordance with accepted standards of practice for meeting those requirements. Prior to the issuance of the certificate of occupancy, the elevation of the lowest floor shall be certified by a registered professional civil engineer or surveyor.

All new construction, repetitive loss structures, and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, be constructed with materials resistant to flood damages and be constructed by methods and practices that minimize flood damages.

(6) In AE zones along watercourses where no floodway has been designated, no new construction, repetitive loss structures, substantial improvements, or other development (including fill) shall be permitted in the AE zone on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

(7) Recreational vehicles shall:

(A) Be on the site for fewer than one hundred eighty (180) consecutive days, or

(B) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(8) When alteration or relocation of a watercourse is proposed, the State of Hawai'i Commission on Water Resource Management and the Hawai'i Department of Land and Natural Resources (Engineering) shall be notified and a copy of the notification shall be submitted to the County Engineer and the Federal Emergency Management Agency. If the State of Hawai'i Commission on Water Resource Management allows alteration and relocation of streams, the applicant shall assure the flood carrying capacity within the altered or relocated portion of any watercourse will be maintained.

(9) Development for which specific requirements are not specified in this Article shall:

(A) Be located and constructed to minimize flood damage.

(B) Be anchored to prevent flotation, collapse or lateral movement resulting from flood loads during conditions of the base flood.

(C) Be constructed of flood damage-resistant materials.

(D) Have machinery and equipment elevated to or above the base flood elevation plus one (1) foot or specifically designed to prevent water from entering or accumulating within the components during the conditions of flooding.

(b) Floodway. The floodway, identified on the FIRMs, is the watercourse reserved to discharge the base flood.

(1) Development Standard. Encroachments, including fill, new construction, repetitive loss structures, and substantial improvements of structures, are prohibited in the floodway unless certified by a registered professional civil engineer, with supporting data that the encroachment will not cause any increase in base flood elevations during the occurrence of the base flood discharge.

(2) Construction Standards. If permitted pursuant to Paragraph (1) of this Subsection, all new construction, repetitive loss structures, and substantial improvements shall comply with all applicable requirements prescribed in Subsection (a) of this Section and Section 15-1.6.

(3) Certification for Development. A registered professional civil engineer shall certify that the encroachment, including fill, new construction, repetitive loss structures, or substantial improvement will not result in any increase in base flood elevations during the occurrence of the base flood discharges.

(c) Coastal High Hazard Areas (Tsunami). Coastal high hazard areas, more commonly known as tsunami inundation areas, are identified as VE zones on the FIRMs.

(1) Anchoring and Structural Support.

(A) All new construction, repetitive loss structures, and substantial improvements shall be securely anchored on pilings or columns.

(B) Pilings or columns used as structural support shall be designed and anchored so as to prevent flotation, collapse, and lateral movement, due to the effects of wind and water loads acting simultaneously on all building components. The wind and water loading values shall each have a one percent (1%) chance of being equaled or exceeded in any given year.

(C) Fill is prohibited for structural support.

(D) Manmade alteration of sand dunes and mangrove stands is prohibited.

(E) All new construction shall be located landward of the reach of mean high tide.

(2) Construction Materials and Methods.

(A) All new construction, repetitive loss structures, and substantial improvements shall be constructed with [and utility equipment] materials resistant to flood damage.

(B) All new construction, repetitive loss structures, and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(C) All electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be elevated to or above the lowest floor.

(3) Elevation. All new construction, repetitive loss structures, and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor, excluding pilings and columns, is elevated to or above the base flood elevation.

(4) Building Height. Notwithstanding the maximum building height limitations as stated in overall building and wall plate height, provided in Paragraph [8-3.7(b)(1)] 8-4.5(b) for single-family detached and attached residential dwellings under the Comprehensive Zoning Ordinance and Paragraph 10-2.4(e)(1) for all structures under the North Shore Development Plan Ordinance, the maximum building height in the coastal high hazard area shall be as follows:

(A) Within the North Shore Planning Area. No structure shall be higher than twenty-five (25) feet from ground level or the base flood elevation plus fifteen (15) feet, whichever is greater at the site, unless a greater height is authorized by the Planning Commission pursuant to a use permit after review and recommendation by the North Shore Improvement Committee.

(B) Single-Family Dwellings Outside the North Shore Special Planning Area. No single-family detached and attached dwellings outside the North Shore special planning area shall be higher than thirty (30) feet from ground or the base flood elevation plus fifteen (15) feet, whichever is greater at the site unless otherwise permitted by the Planning Commission.

(5) Enclosure of Space Below Lowest Floor with Breakaway Walls. Space below the lowest floor may be enclosed solely for parking of vehicles, building access, or storage; no machinery or equipment which services a building such as furnaces, air conditioners, heat pumps, hot water heaters, washers, dryers, elevator lift equipment, electrical junction and circuit breaker boxes, and food freezers are permitted; however, enclosure must only be achieved with breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of twenty (20) pounds per square foot may be

permitted only if a registered professional structural engineer that the design proposed meet the following conditions:

(A) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

(B) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have one percent (1%) chance of being equaled or exceeded in any given year (100-year mean occurrence interval).

(6) Water and Sewer.

(A) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters.

(B) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(7) Certification by Engineer or Architect. Building plans for new construction, repetitive loss structures, and substantial improvements shall be certified by a registered professional structural engineer or architect that the new construction or substantial improvement is designed and methods of construction to be used are in accordance with accepted standards of practice for meeting the requirements of this Section. Prior to the issuance of the certificate of occupancy, the elevation of the bottom of the lowest structural member of the lowest floor shall be certified by a registered professional civil engineer or land surveyor.

All new construction, repetitive loss structures, and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of wind and buoyancy, be constructed with materials resistant to flood damages and be constructed by methods and practices that minimize flood damages.

(8) The placement of mobile homes or manufactured homes in the coastal high hazard flood zone is prohibited.

(9) Recreational vehicles placed on sites within Zone VE on the community's FIRM shall either:

(A) Be on the site for fewer than one hundred eighty (180) consecutive days, or

(B) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(10) Development for which specific requirements are not specified in this Article shall:

(A) Be located and constructed to minimize flood damage.

(B) Be anchored to prevent flotation, collapse or lateral movement resulting from flood loads during conditions of the base flood.

(C) Be constructed of flood damage-resistant materials.

(D) Have machinery and equipment elevated to or above the base flood elevation plus one (1) foot.

(d) General Floodplain. The general floodplain, identified as A, X and D zones on the FIRMs, are areas of special flood hazards for which detailed engineering studies were not done by the Federal [Insurance Administration] Emergency Management Agency to determine the base flood elevations and to identify the floodways.

(1) [Determination of Applicable Standards. All new construction, repetitive loss structures, and substantial improvements shall satisfy the requirements of Subsection (a) of this Section, relating to the flood fringe, or Subsection (b) of this Section, relating to the floodway, whichever subsection is determined to be applicable by the County Engineer to the construction or improvement. The County Engineer shall review the proposed development to assure that all necessary permits have been received from those government agencies from which approval is required by Federal or State law.] Determination of Flood Hazards. The County Engineer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including information requested of the applicant, to determine base flood elevations and the location of floodways in the general floodplain and to determine whether the proposed building sites or subdivisions

(including manufactured home parks) will be reasonably safe from flooding.

(2) Determination of Applicable Construction and Development Standards. Construction and development standards provided in Subsections (a) and (b) of this Section shall apply [as determined] to new construction, repetitive loss structures, and substantial improvements in general floodplains identified as A and D zones on the FIRM, and shall apply to new construction and substantial improvements in general floodplains identified as X zones on the FIRM, when determined applicable by the County Engineer. The applicable standards in Subsection (a) of this Section shall apply to development other than new construction, repetitive loss structures, and substantial improvements in general floodplain identified as A and D zones on the FIRM, when determined applicable by the County Engineer.

(3) Information to be Provided. The following information shall be provided to the County Engineer to evaluate the proposed construction on improvement site:

(A) Project location and site plan showing dimensions.

(B) Relationship to floodway and flood fringe areas as determined by flood study.

(C) Topographic data, contours, or spot elevations based on reference marks on flood maps.

(D) Existing and proposed flood-proofing and flood control measures.

(E) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures; and if the structure has been floodproofed, the elevation to which the structure was floodproofed.

(F) The State of Hawai'i Commission on Water Resource Management and the Hawai'i Department of Land and Natural Resources (Engineering) shall be notified prior to any alteration or relocation of a watercourse and a copy of the notification shall be submitted to the [Administrator] County Engineer and the Federal Emergency Management Agency. If the State of Hawai'i [will allow] Commission on Water Resource Management allows alteration and relocation of streams, the applicant shall assure the flood carrying capacity within the altered or relocated portion of any watercourse [shall] will be maintained.

(G) A record of all of this information shall be maintained by the [Floodplain Manager.] County Engineer.

(e) Construction of Development Adjacent to Drainage Facility Outside Identified Special Flood Hazard Areas.

(1) Subject to Review. All new construction, repetitive loss structures, and substantial improvements proposed adjacent to a drainage facility outside of the special flood hazard area identified on the FIRMs shall be subject to review and approval of the County Engineer. Upon request by the County Engineer further information concerning base flood, floodway, surface water run-off, existing and proposed drainage patterns, and other information, including flood studies, findings and opinions by a registered professional civil engineer shall be provided to evaluate potential flooding.

(2) Development and Construction Standards.

(A) The County Engineer shall determine the applicability of the various development and construction standards provided in this Article based upon best information available from a Federal, State, or other source, including information provided by the applicant.

(B) No drainage facility shall be modified, constructed, lined, or altered in any way unless approved by the County Engineer.

**Sec. 15-1.6 Development Standards for Subdivision Within the Special Flood Hazard Areas.**

(a) Standards. All subdivisions (including manufactured home parks and subdivisions) within the special flood hazard areas shall:

(1) Be consistent with the need to minimize flood damage;

(2) Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage; and

(3) Have adequate drainage provided to reduce exposure to flood damage; in Zones AH and AO, adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

(b) Identification of Special Flood Hazards and Base Flood Elevations.

(1) Subdivision Applications. All subdivision applications shall identify the areas of special flood hazards and base flood elevations on the preliminary subdivision map or proposed site plan. If such information is not provided by the FIRMs, the County Engineer shall



request and the applicant shall provide this information for all new subdivision applications and other proposed developments (including proposals for manufactured home parks and subdivisions) that have greater than fifty (50) lots or five (5) acres, [whichever is greater] whichever is the lesser (which is when a subdivision meets the threshold of either fifty (50) lots regardless of size, or five (5) acres regardless of number of lots). For subdivisions [or developments] with fifty (50) lots or less or five (5) acres or less, the County Engineer may require and the applicant shall provide such information.

(2) Elevation Information on Approved Plans. All finally approved subdivision plans for subdivisions within the special flood hazard areas shall provide base flood elevations within the lots.

(3) Fill Above Base Flood Elevation. If fill is used to elevate the site of any lot above the base flood elevation, the final ground elevation of the pad shall be certified by a registered professional civil engineer or surveyor.

#### **Sec. 15-1.7 Variance.**

(a) Standards. A variance from this Article may be issued by the County Engineer only upon an application meeting the following standards:

(1) There is a good and sufficient cause for requesting a variance;

(2) The applicant will suffer exceptional hardship should the variance be denied;

(3) A variance is the minimum necessary, considering the flood hazard, to afford relief; and

(4) A variance will not increase base flood heights, create additional threats to public safety, create extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(b) Considerations Applicable to Standards. The Federal Emergency Agency (FEMA) has developed principles and guidelines for the approval of any variance, and the intent of such is incorporated herein. These indicate that variances should be rarely granted, and compliance to flood requirements is a necessity.

An explanation of the standards are as follows:

(1) Good and Sufficient Cause for Variance. Under this criteria, the applicant must demonstrate that the variance request is for land which has physical characteristics so unusual that complying to

flood requirements will create exceptional hardship to the applicant or surrounding land owners. The unique characteristics must pertain to the land itself and not the structure, its inhabitants or the property owner.

Under this criteria, only exceptional instances should arise where the physical characteristics of properties create a hardship sufficient to justify granting a variance. Even in a fairly common situation where an undeveloped lot is surrounded by properties with structures built at grade and or below flood levels, a variance cannot be justified since an applicant can erect the concerned structure on pilings, etc.

(2) Exceptional Hardships. Under this criteria, the hardship that would result from failure to grant a requested variance must be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors cannot, as a rule, qualify as exceptional hardship.

As an example, a member of a household is physically handicapped and wants a variance to build the dwelling at grade or at a lower level for access purposes. A variance should not be issued because the owner can construct a ramp or elevator to meet flood requirements. Elevation will allow the infirm or handicapped person to be evacuated in the early stage of flooding, and, if there is insufficient warning or help in evacuating that person, then in all likelihood he or she can survive the flood by simply remaining in the home safely above the levels of floodwaters.

(3) Increased Flood Heights. Under this criteria, an applicant must demonstrate that flood levels will not be raised above the base flood elevations.

(4) Minimum to Afford Relief. Under this criteria, the variance that is granted should be for the minimum deviation from the flood requirements that will still alleviate the hardship.

In the case of variance to an elevation requirement, this does not mean approval to build at grade level or to whatever elevation an applicant proposes, but rather to a level that the County Engineer determines will both provide relief and preserve the integrity of the flood ordinance.

(c) Conditions for Variance. Such conditions may include:

(1) Modification of the construction or substantial improvement including the sewer and water supply facilities.

- (2) Limitations on periods of use and operation.
- (3) Imposition of operational controls, sureties and deed restrictions.
- (4) Requirements for construction of channels, dikes, levees and other flood-protective measures.
- (5) Floodproofing measures designed consistent with the regulatory flood elevation, flood velocities, hydrostatic and hydrodynamic forces and other factors associated with the base flood.
- (6) Other conditions as may be required by the County Engineer.

(d) Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, provided the variance meets the requirements of the Section, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

[(d)] (e) Application for Variance. An application for a variance shall be submitted to the County Engineer signed and stamped by a registered professional engineer or architect, and shall include three (3) sets of documents with the following information as may be applicable.

- (1) Plans and specifications showing the site and location; dimensions of all property lines and topographic elevation of the lot; existing and proposed structures and improvements, fill, storage area; location and elevations of existing and proposed streets and utilities; floodproofing measures; relationship of the site to the location of the flood boundary; floodway; and the existing and proposed flood control measures and improvements.
- (2) Cross-sections and profile of the area and the regulatory flood elevations and profile based on elevation reference marks on flood maps.
- (3) Flood study and drainage report in areas where study and report have not been reviewed and accepted by the County.
- (4) Description of surrounding properties and existing structures and uses and the effect of the regulatory flood on them caused by the variance.

(5) Evaluation and supporting information for the variance with respect to each of the four (4) factors to be considered by the County Engineer as listed in Subsection (b) of this Section.

(6) An agreement, executed by the property owner, that a covenant will be inserted in the deed and other conveyance documents of the property and filed with the Bureau of Conveyances of the State of Hawai'i stating that the property is located in a flood hazard area subject to flooding and flood damage; that a flood hazard variance to construct a structure below the base flood elevation will result in increased flood insurance premium rates and increased flood risks to life and property; that the property owners will not file any lawsuit or action against the County for costs or damages or any claim; that the property owners will indemnify and hold harmless the County from liability when such loss, damage, injury, or death results due to flood hazard variance and flooding of the property; and that upon approval of the variance, the covenants shall be fully executed and proof of filing with the Bureau of Conveyances shall be submitted to the County Engineer prior to the issuance of a building permit.

(7) Such other information as may be relevant and requested by the County Engineer.

[(e)] (f) Notification and Record Keeping. The County Engineer shall notify the applicant in writing over the signature of a County official that (i) the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage, and (ii) such construction below the base flood level increases risk to life and property. Such notification shall be maintained with a record of all variance actions. The County shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to the [Administrator.] Federal Emergency Management Agency.

### **Sec. 15-1.8 Nonconforming Structures.**

Any nonconforming structure existing on the effective date of [March 31, 1987,] November 4, 1981 or made nonconforming by a change in the special flood hazard area, may continue subject to the following conditions:

(a) Any repair, reconstruction, improvement, or addition to a nonconforming structure, if it is [considered] determined to be substantial improvement or repair of substantial damage, shall comply with the applicable standards for the special flood hazard areas; provided, however, that substantial improvement of a damaged, destroyed, or demolished structure located in a floodway will not be allowed unless a variance from the flood requirements is obtained.

(b) Replacement or reconstruction of a destroyed or demolished nonconforming structure is new construction and shall comply with the applicable standards of this Article.

[(b)] (c) All relocated structures shall comply with the applicable standards for the special flood hazard area.

### **Sec. 15-1.9 Penalties and Enforcement.**

(a) Any person, firm, or corporation violating any provision of this Article shall be deemed guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Article is committed, continued, or permitted, and upon conviction of any such violation such person shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment.

(b) Any building, structure, improvement, or development constructed or maintained contrary to the provisions of this Article is deemed unlawful and a public nuisance. The County may commence a civil action for the abatement, removal, or enjoinder thereof in any manner provided by law.

(c) The remedies provided in this Article are cumulative and nonexclusive.

SECTION 3. Severability. If any provision of this Ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included. The date of approval of this Ordinance shall be substituted for the \*\*\* placeholder.

SECTION 5. This Ordinance shall take effect upon approval.

Introduced by: /s/ BILL DECOSTA  
(By Request)

DATE OF INTRODUCTION:

**December 16, 2020**

Lihu'e, Kaua'i, Hawai'i

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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2816, Draft 1, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on February 10, 2021, by the following vote:

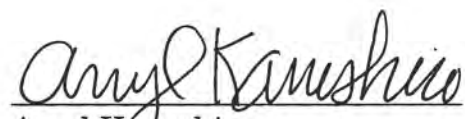
FOR ADOPTION:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i  
February 10, 2021



Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i

ATTEST:

  
Arryl Kaneshiro  
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

February 10, 2021

Approved this 10<sup>th</sup> day of

February, 2021.



Derek S.K. Kawakami,  
Mayor  
County of Kaua'i

RECORDED

21 FEB 11 P2:49

OFFICE OF  
THE COUNTY CLERK  
COUNTY OF KANAS

**Ordinance No. 5603, 2023, An Ordinance to Replace Chapter 19.62, Maui County Code, and Create a New Chapter 16.29, Maui County Code, Relating to Flood Hazard Areas**

Chapter 16.29 Flood Hazard Areas



ORDINANCE NO. 5603

BILL NO. 126, CD1 (2023)

A BILL FOR AN ORDINANCE REPEALING CHAPTER 19.62, MAUI COUNTY CODE, AND CREATING A NEW CHAPTER 16.29, MAUI COUNTY CODE, RELATING TO FLOOD HAZARD AREAS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. This Ordinance’s purpose is to repeal Chapter 19.62 - Flood Hazard Areas from Title 19 and relocate it in its entirety with modifications to a new Chapter 16.29 of Title 16 of the Maui County Code. The modifications include changing the responsibility for administering flood hazard areas from the Director of Planning to the Director of Public Works, and requiring that all machinery and equipment servicing a building be elevated to one foot above the base flood elevation, consistent with the Federal Emergency Management Agency’s (FEMA) requirement.

SECTION 2. Chapter 19.62, Maui County Code, is repealed.

SECTION 3. Title 16, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“Chapter 16.29**

**FLOOD HAZARD AREAS**

**Sections:**

<b>16.29.010</b>	<b>Legislative intent.</b>
<b>16.29.020</b>	<b>Statutory authority.</b>
<b>16.29.030</b>	<b>Definitions.</b>
<b>16.29.040</b>	<b>Special flood hazard areas.</b>

<b>16.29.045</b>	<b>Responsible county official.</b>
<b>16.29.050</b>	<b>Administration.</b>
<b>16.29.060</b>	<b>Standards for development.</b>
<b>16.29.100</b>	<b>Developments adjacent to drainage facilities.</b>
<b>16.29.130</b>	<b>Enforcement.</b>
<b>16.29.140</b>	<b>Variances and appeals.</b>
<b>16.29.160</b>	<b>Warning and disclaimer of liability.</b>
<b>16.29.170</b>	<b>Other laws and regulations.</b>
<b>16.29.180</b>	<b>No exemptions.</b>

**16.29.010 Legislative intent.** A. Within the County of Maui, certain areas are subject to periodic inundation by flooding or tsunami or both, resulting in loss of life and property, creation of health and safety hazards, disruption of commerce and governmental services, as well as extraordinary public expenditures for flood and tsunami protection and relief, and impairment of the tax base, all of which adversely affect public health, safety, and general welfare.

B. The flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

C. Congress has determined that regulation of construction in areas subject to flood hazards is necessary for the protection of life and property and reduction of public costs for flood control, rescue, and relief efforts, which promote the safety, health, convenience, and general welfare of the community. In order to achieve these purposes, this chapter establishes flood hazard areas and imposes restrictions on man-made changes to improved and unimproved real estate within the areas. These restrictions are necessary to qualify the County of Maui for participation in the federal flood insurance program.

D. Failure to participate in the program would substantially increase the cost of flood insurance to individual residential and commercial property owners and result in the denial of federal financial assistance.

E. This chapter is designed to:

1. Protect human life and health, and promote the general welfare.
2. Minimize expenditure of public money for costly flood control projects.
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.

4. Minimize prolonged business interruptions.
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard.
6. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard.
7. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

**16.29.020 Statutory authority.** This chapter is enacted in accordance with the U.S. National Flood Insurance Act of 1968 (public laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (public law 93-234), as amended, and chapter 46, Hawaii Revised Statutes.

**16.29.030 Definitions.** Definitions contained in regulations governing the National Flood Insurance Program, 44 CFR 59 through 77, as amended, are incorporated by reference and made a part of this chapter. Where terms are not defined in this chapter, they will have their ordinary accepted meanings within the context in which they are used or as they are defined in section 19.04.040. The following words and terms used are only applicable to this chapter and are defined as follows:

“Architect” means a person who has a license to practice architecture in the State of Hawaii.

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year, also called the “100-year flood.”

“Base flood elevation” means the water surface elevation of the base flood.

“Basement” means any area of a building having its floor below ground level on all sides.

“Breakaway wall” means a wall that is not part of the structural support of a building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

“Coastal high hazard area” means a special flood hazard area subject to high velocity wave action from storms or seismic sources and designated on a flood insurance rate map as zone VE or V.

“Development” means any man-made change to improved or unimproved real estate, including walls, buildings, or other structures, filling, grading, excavation, mining, drilling operations, dredging, paving, or storage of equipment or materials.

“Director” means the director of public works or the director's authorized representative.

“Encroachment” means the advance or infringement of uses, plant growth, fill, excavation, walls, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.

“Engineer” means a person who is licensed to practice civil or structural engineering in the State of Hawaii.

“FEMA” means Federal Emergency Management Agency.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, resulting from any source, such as tsunamis, or the unusual and rapid accumulation of runoff of surface waters or mud from any source.

“Flood insurance rate map (FIRM)” means the map on which the FEMA or Federal Insurance Administration has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

“Flood insurance study” means the report provided by the Federal Insurance Administration that includes flood profiles, the flood insurance rate map, and the water surface elevation of the base flood.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures and properties that reduce flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

“Floodway” means the channel or watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

“Floodway fringe” is a special flood hazard area in which a floodway is designated, and means the area between the special flood hazard area boundary and the floodway boundary.

“General floodplain” means an area of special flood hazards for which detailed engineering studies were not performed by FEMA to determine the base flood elevations or to identify the floodways, and is identified as zones A, D, or V on the FIRM.

“Highest adjacent grade” means the highest natural elevation of the ground surface before construction next to the proposed walls of a structure.

“Historic structure” means a structure that is: (a) listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior

as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district; (c) individually listed on a State inventory of historic places in accordance to a historic preservation program approved by the Secretary of Interior; or (d) individually listed on a local inventory of historic places in accordance with a historic preservation program certified either (1) by an approved State program as determined by the Secretary of the Interior, or (2) directly by the Secretary of the Interior in states without approved programs.

“Lowest floor” means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood-resistant enclosure used solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor if the enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

“Manufactured home” means a structure other than a recreational vehicle, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities.

“Market value” means the value determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation accrued since the structure was constructed. In determining market value:

1. The cost of replacement of the structure must be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry.

2. The amount of depreciation must be determined by considering the age and physical deterioration of the structure and functional obsolescence as approved by the director, but must not include economic or other forms of external obsolescence.

3. Replacement costs or accrued depreciation factors different from those in recognized building cost estimating guides may be considered only if these costs or factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

“Mean sea level” means the local tidal datum also called local mean sea level or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

“New construction” means structures for which the "start of construction" commenced on or after the effective date of the ordinance codified in this chapter, as amended, and includes any

subsequent improvements to these structures.

“Recreational vehicle” means a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Repetitive loss structure” means a structure that was damaged by flood two or more times within any ten-year period, where the cost of fully repairing the flood damage to the structure, on average, equaled or exceeded twenty-five percent of its market value at the time of each flood.

“Special flood hazard area” means an area having special flood or flood-related erosion hazards, and shown on a FIRM as zone A, AO, AE, AEF, A99, AH, D, VE, or V.

“Start of construction” includes substantial improvement and other proposed new development and means the date the building permit was issued, if the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, and a manufactured home.

“Substantial damage” means damage of any origin sustained by a structure where the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent of the market value of the structure, excluding land, before the damage occurred.

“Substantial improvement” means any repair, replacement, reconstruction, rehabilitation, addition; or any series of repairs, replacement, reconstruction, rehabilitation, or additions; or other proposed new development of a structure or repetitive loss of a

structure in the ten-year period preceding the currently proposed improvement, but no earlier than September 25, 2009, the cumulative cost of which equals or exceeds fifty percent of the market value of the structure, excluding land, determined as follows:

For each improvement or proposed improvement, the director must establish the ratio expressed as a percentage of the cost of improvement divided by the market value of the structure, excluding land, on an application for a flood development permit for the improvement. The director must add the cumulative total of each of the individual percentages. If the cumulative total of percentages exceeds fifty percent, then the improvements in the preceding ten-year period are substantial.

This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. An improvement must constitute a substantial improvement only if:

1. The structure was constructed on or before June 1, 1981;
2. The structure was constructed after June 1, 1981, and was not within a special flood hazard area at the time the building permit was issued;
3. The structure was constructed after June 1, 1981, and was the subject of a map change that resulted in higher base flood elevations; or
4. The structure was constructed after June 1, 1981, and was the subject of a map change that resulted in a FIRM zone change.

The following are exceptions to the above and do not constitute a substantial improvement:

1. Any project for improvement of a structure to correct existing violations of State or County health, sanitary, or safety specifications.
2. Any alteration of a historic structure that does not preclude the structure's continued designation as a historic structure.

"Surveyor" means a person who is licensed to practice surveying in the State of Hawaii.

"Violation" means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without a required elevation certificate, other certification, or other evidence of compliance with this chapter is presumed to be in violation until the required certificate or other evidence of compliance is provided.

"Watercourse" means a stream, wash, channel, or other topographic feature on or over which waters flow at least periodically.

“Water surface elevation” means the height, in relation to the national geodetic vertical datum of 1929, or other specified datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Zoning district” means a zoning district as established by the County of Maui zoning ordinances and a land use district as established by the State land use commission, as applicable.

**16.29.040 Special flood hazard areas.** A. Applicability.

1. This chapter must apply to all land within the special flood hazard areas and corresponding areas of special flood hazard delineated on the FIRM, as prepared by FEMA. The following special flood hazard areas are established:

- a. Floodway area (floodway in zone AEF).
- b. Flood fringe area (zones AE, AH, AO).
- c. Coastal high hazard area (zones V, VE).
- d. General floodplain area (zones A, D, V).

B. Identification of special flood hazard areas. The flood insurance rate map and flood insurance study effective September 25, 2009, and any subsequent revisions and amendments, are adopted and declared to be part of this section, and will be on file at the County of Maui, department of public works.

C. Abrogation and greater restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another title or chapter of this code, easement, covenant, or deed restriction conflict, the more stringent restrictions prevail.

D. Interpretation. All provisions of this chapter must be considered as minimum requirements and liberally construed in favor of the County. This chapter neither limits nor repeals any powers granted under State statute.

**16.29.045 Responsible county official.** The director will be the official with the responsibility, authority, and means to implement the commitments required to implement the national flood insurance program.

**16.29.050 Administration.** A. Special flood hazard area development permit. A special flood hazard area development permit must be obtained from the director before construction of any development begins within any special flood hazard area, flood-related erosion hazard area, or mudslide area. Application for a permit must be made on forms furnished by the director that may require plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question, existing or proposed structures, fill, stockpiles, and drainage facilities. The



application must require the following:

1. Proposed elevation, in relation to mean sea level of the lowest floor, including basement of all structures. In zone AO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures.

2. Proposed elevation, in relation to mean sea level, to which any structure will be floodproofed.

3. All appropriate certifications required under section 16.29.060.

4. Description of any anticipated watercourse alteration or relocation as a result of the proposed development.

B. Permit review. The director will review all special flood hazard development permit applications to determine the following:

1. That the requirements of this chapter have been satisfied.

2. That the site is reasonably safe from flooding.

3. That where base flood elevations have been determined but a floodway has not been designated, the cumulative effect of the proposed development, as certified by an engineer, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood at any point.

4. That all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334, section 404.

5. That for proposed building sites in flood-prone areas where special flood hazard areas have not been defined, water surface elevations have not been provided, and there is insufficient data to identify the floodway or coastal high hazard areas, but the director has determined that there are verifiable physical indications that hazards are present, all new construction and substantial improvements, including the placement of manufactured homes, must be:

- a. Designed and adequately anchored to prevent flotation, collapse, or lateral movement.

- b. Constructed of flood-resistant materials.

- c. Constructed by methods and practices that minimize flood damage.

- d. Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located at least one foot above the base flood elevation to prevent water from entering or accumulating within the

components during conditions of flooding.

e. Constructed so that new and replacement utilities will comply with the requirements of subsection 16.29.060(B).

C. Use of other base flood data. Where base flood elevations have not been determined, the director must obtain, review, and reasonably use any base flood elevation and floodway data available from a federal or state agency, or other source, in administering section 16.29.060.

D. Flood map revisions. Whenever the director determines that base flood elevations may increase or decrease due to a proposed development in a special flood hazard area, the owner of the property must obtain a conditional letter of map revision from FEMA before the approval or issuance of any development permit, as follows:

1. If a floodway is not designated within the subject special flood hazard area, any development in the subject special flood hazard area requires a conditional letter of map revision.

2. If a floodway is designated within the subject special flood hazard area and the development will cause a rise in the base flood elevation, a conditional letter of map revision is required. Development within the floodway fringe does not require a conditional letter of map revision.

A letter of map revision must be obtained from FEMA whenever a development has increased or decreased the base flood elevation within any special flood hazard area. An application for a letter of map revision must be submitted to FEMA no later than six months after the completion of a development.

E. Watercourse alteration. Whenever a watercourse is to be altered or relocated, the director will:

1. For riverine situations, require the applicant to notify the State of Hawaii department of land and natural resources, commission on water resource management, before alteration or relocation, and submit evidence of the notification to the Federal Insurance Administration and FEMA.

2. Require that the flood-carrying capacity of the altered or relocated portion of the watercourse be maintained.

F. Certifications. The director will obtain and maintain for public inspection the certifications required under section 16.29.060.

G. Boundary determinations. The director must determine, where needed, the exact location of boundaries of special flood hazard areas, including where there appears to be a conflict between a mapped boundary and actual field conditions.

1. Where interpretation is needed as to whether or not a development lies within a special flood hazard area or as to the base flood elevation affecting a development, a request for interpretation must be submitted to the director. The request must include a description of the development site, a location plan showing the property lines and dimensions of the development, and a copy of the tax map showing the parcel on which the development is proposed to be constructed. The director must, where interpretation is possible from the information shown on the FIRM, issue written determination of the specific area boundaries and the base flood elevation.

2. Where, in the opinion of the director, interpretation is not possible from the information shown on the FIRM, the director must require the applicant to provide more detailed information concerning the request for determination of flood boundaries and the base flood elevation. The additional information must be submitted to the director and must contain a recommendation certified by an engineer as to the flood area and base flood elevation that should apply to the proposed development and must include three sets of documents certified by the engineer containing adequate data consistent with this chapter, such as flood and hydrology studies, project site and location plans, property maps showing lines and dimensions, tax maps, and topographic data including contours or spot heights based upon mean sea level. After review, the director must, in writing:

a. Inform the applicant that the detailed request contains inadequate data to determine flood area boundaries and base flood elevations, and specify the specific lack of data needed to resolve the question and decline to make a determination; or

b. Based on the supporting data submitted with the request for interpretation and other available data, determine the flood area boundaries and the base flood elevations affecting the development.

**16.29.060 Standards for development.** A. Standards of construction. In special flood hazard areas, the following standards are required:

1. Anchoring.

a. New construction and substantial improvements must be adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the

effects of buoyancy.

2. Construction materials and methods.

a. New construction and substantial improvements must be constructed with materials and utility equipment resistant to flood damage.

b. New construction and substantial improvements must be constructed using methods and practices that minimize flood damage.

c. New construction and substantial improvements must be constructed with electrical, heating, ventilation, plumbing, air conditioning, and other service facilities that are designed or located at least one foot above the base flood elevation so as to prevent the entry and accumulation of floodwater.

d. New construction and substantial improvements within zones AH or AO must provide adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

3. Elevation and floodproofing.

a. New construction and substantial improvements, except those in zone AO, must have the lowest floor, including basement, elevated to at least one foot above the base flood elevation. On completion of the structure, the elevation of the lowest floor, including basement, must be certified by an engineer or surveyor. FEMA's "elevation certificate" form, as amended, must be used for the certification and a copy provided to the director.

b. New construction and substantial improvements in zone AO must have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as one foot above the depth number specified in feet on the FIRM, or at least three feet if no depth number is specified. On completion of the structure, the elevation of the lowest floor, including basement, must be certified by an engineer or surveyor. FEMA's "elevation certificate" form, as amended, must be used for the certification and a copy provided to the director.

c. Nonresidential construction must either be elevated to conform with subparagraphs a or b, or, together with attendant utility and sanitary facilities:

i. Be floodproofed so that walls below the base flood level are substantially impermeable to the passage of water.

ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

iii. Be certified by an engineer or architect, as satisfying the standards of this subparagraph. FEMA's "floodproofing certificate" form, as amended, must be used for the certification and a copy provided to the director.

d. New construction and substantial improvements of fully enclosed areas below the lowest floor that are used solely for vehicular parking, building access, or storage in an area other than a basement that is subject to flooding, must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must be either certified by an engineer or architect or meet or exceed one of the following minimum criteria:

i. Provide a minimum of two openings, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, with the bottom of all openings no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices if they permit the automatic entry and exit of floodwater; or

ii. Be certified by an engineer as complying with a County floodproofing standard approved by the Federal Insurance Administration or FEMA.

e. New construction and substantial improvements must be reasonably safe from flooding in accordance with FEMA technical bulletin 10-01, as amended. Designs for meeting this requirement must be certified by an engineer.

4. Building height allowance. Building heights in the agricultural, rural, and residential zoning districts may be increased by a height equal to the base flood, up to a maximum of five feet above the maximum building height permitted by the zoning regulations for the zoning district in which the building is located.

5. An architect or engineer must certify that all new construction and substantial improvements meet or exceed applicable standards for flood hazard reduction, including those regarding anchoring, construction materials and methods, elevation and floodproofing, utilities, subdivisions,

and manufactured homes.

6. Within zones A, AH, AO, and AE, except where there is a designated floodway or flooding caused by coastal run up, no new construction, substantial improvement, or other development, including fill, is permitted unless the cumulative effect of the proposed construction, substantial improvement, or development when combined with all other existing and anticipated construction, substantial improvement, and development, does not increase the water surface elevation of the base flood at any point.

B. Utilities.

1. New and replacement water supply and sanitary sewage systems must be designed to minimize or eliminate infiltration of floodwaters into these systems and discharge from these systems into floodwaters.

2. On-site waste disposal systems must be located to avoid impairment to, or contamination from, these systems during flooding.

C. Subdivisions and other developments.

1. All subdivisions and other developments where special flood hazard areas have not been defined, water surface elevations have not been provided, and when there is insufficient data to identify the floodway or coastal high hazard areas, but there are verifiable physical indications that hazards are present as determined by the director, must:

a. Be consistent with the need to minimize flood damage.

b. Have utilities, such as sewer, gas, electric, and water systems located and constructed to minimize flood damage.

c. Provide adequate drainage to reduce exposure to flood hazards.

d. Provide documentation and a certification that the requirements of section 16.29.050 have been satisfied.

2. All subdivision and other development applications must identify special flood hazard areas and base flood elevations on the proposed site. If the information is not provided by the FIRM and if the proposed development or subdivision consists of more than fifty lots or more than five acres, the developer or subdivider must include base flood elevation data within the proposal.

3. Approved final subdivision plats for subdivisions within special flood hazard areas or flood-prone areas must include the base flood elevations within the lots as provided in subsection (C)(2).

D. Manufactured homes. Manufactured homes that are placed or substantially improved within special flood hazard areas that are not coastal high hazard areas must be elevated on a permanent foundation so that the lowest floor of the manufactured home is elevated to at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Manufactured homes that are placed or substantially improved within coastal high hazard areas must meet the requirements of subsection G.

E. Recreational vehicles. Recreational vehicles placed on sites within zones A, AH, AE, AO, V, or VE, must either:

1. Be on-site for fewer than thirty consecutive days;
2. Be fully licensed and ready for highway use, if they are on wheels or a jacking system, are attached to the site only by a quick disconnect type utilities and security device, and have no permanently attached additions; or
3. Meet the permit requirements of section 16.29.050 and the requirements for manufactured homes under subsection D.

F. Floodways. No encroachments, including fill, new construction, substantial improvement, or other new development will be allowed within floodways unless certification by an engineer is provided to the director demonstrating that the encroachments will not result in any increases in base flood levels.

G. Coastal high hazard areas. Within coastal high hazard areas:

1. New construction and substantial improvements must be elevated on adequately anchored pilings or columns and securely anchored to the pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor, excluding the pilings or columns, is elevated to at least one foot above the base flood level. The pile or column foundation and the structure attached must be anchored to resist flotation, collapse, and lateral movement due to the simultaneous action of wind and water loads on all building components. Water loading values used for purposes of meeting this requirement must be those associated with the base flood. Wind loading values used must be those required by the International Building Code and the International Residential Code, as amended.
2. New construction and substantial improvements must be located on the landward side of the reach of mean high tide.
3. New construction and substantial improvements must have the space below the lowest floor free of

obstructions, or constructed with breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. This space must not be used for human habitation, but will be used solely for vehicular parking, building access, or storage. Machinery and equipment that service the building, such as furnaces, air conditioners, heat pumps, water heaters, elevator lift equipment, electrical junction and circuit boxes are prohibited in these spaces. A breakaway wall must have a safe design loading resistance of not less than ten and no more than twenty pounds per square foot. Breakaway wall collapse must be designed to result from a water load less than that which would occur during a base flood and the elevated portion of the building must be designed so as not to incur any structural damage from wind and water loads acting simultaneously during a base flood.

4. Fill must not be used for structural support of buildings.

5. Man-made alteration of sand dunes must not increase potential flood damage.

6. The director must be provided and will maintain the following records:

a. Certification by an engineer or architect that the proposed structure complies with paragraphs 1 through 5 in subsection G.

b. Certification by an engineer or surveyor of the elevation, in relation to mean sea level of the bottom of the lowest structural member of the lowest floor, excluding pilings or columns of all new and substantially improved structures. FEMA's "elevation certificate" form, as amended, will be used for the certification.

7. Areas of a structure below the base flood elevation may be used for parking vehicles, storage, or access to the building, but not for human habitation. For these areas that are five feet or more in height as measured from any point within these areas, the property owner must enter into a "non-conversion agreement for construction within flood hazard areas" with the County. The agreement must be in a form acceptable to the director and will be recorded with the bureau of conveyances or land court as a deed restriction.

The director may, on prior notice of at least seventy-two hours, inspect any area of a structure below the base flood elevation to ensure compliance.



H. General floodplain. For areas within the general floodplain:

1. The director may obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, including information requested of a permit applicant to determine base flood elevations and the locations of floodways within the general floodplain.

2. Development or subdivision proposals must conform to the requirements of subsection 16.29.060(C).

3. An applicant for a special flood hazard area development permit within a general floodplain area must submit the following information to the director:

a. Project location and site plan showing dimensions.

b. Relationship to floodway and floodway fringes as determined by flood elevation study.

c. Contour map of appropriate scale and contours showing the topography of the existing ground levels based on elevation reference marks on flood maps.

d. Existing and proposed base flood elevations.

e. Existing and proposed floodproofing and flood control measures. The director may waive informational requirements if the director has sufficient information to make an evaluation and determination regarding flood elevation, or may request further information, including a detailed flood elevation study and a drainage report to evaluate flood risks and determine the applicability of flood construction and development standards.

f. If the information provided gives the director reason to believe that there may be a significant impact on the floodplain, the director may require additional information.

4. For new construction and substantial improvements in zone A, the director must, based on base flood information and floodway data obtained through subsections H.1 and H.3, require compliance with the standards for zones AE, AO, and AH, as applicable. For new construction and substantial improvements in zone V, the director will require compliance with the standards for zone VE, as applicable.

5. New construction and substantial improvements within the general floodplain must conform to sections

16.29.050 and 16.29.060.

6. All manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement.

**16.29.100 Developments adjacent to drainage facilities.**

A. Applications involving developments encompassing or adjoining any stream, river, or drainage facility outside of the special flood hazard areas identified on the FIRM will be subject to review by the director. On request by the director, further information concerning base flood elevation, floodways, surface water runoff, existing and proposed drainage patterns, and other information, including a detailed flood elevation study, drainage report, and findings and opinions by an engineer must be provided to evaluate the potential flooding of the area.

B. The director must not issue or recommend issuance of any permit or approval involving modification, construction, lining, or alteration of any drainage facility, river, or stream unless the modification, construction, lining, or alteration does not reduce the capacity of the drainage facility, river, or stream, or adversely affect any downstream or adjacent property.

C. New construction and substantial improvements encompassing or adjoining any stream, river, or drainage facility outside of the special flood hazard areas must conform to sections 16.29.050 and 16.29.060.

**16.29.130 Enforcement.** The director must enforce this chapter in accordance with chapter 19.530.

**16.29.140 Variances and appeals.** A. The board of variances and appeals must hear and decide appeals alleging an error in any requirement or determination by the director and requests for variances from the requirements of this chapter.

B. Application. Applications for variances and appeals must conform to the requirements of chapter 19.520. The application must be certified by an architect or engineer, and must include three sets of the following documentation:

1. Plans and specifications showing: the site and location; dimensions of all property lines and topographic elevation of the lot; existing and proposed structures and improvements, fill, and storage areas; location and elevations of existing and proposed streets and utilities; floodproofing measures; relationship of the site to flood boundaries; and existing and proposed flood control measures and improvements.

2. Cross-sections and profile of the area and the base flood elevations based on mean sea level.

3. Flood study and drainage report.
4. Description of surrounding properties and existing structures and uses, and the effect of a base flood as a result of the variance.
5. Justification for the variance with consideration of the intent and provisions of this chapter and information on the impact the variance would have on the factors listed in subsection C and proposed mitigative measures.
6. An agreement to insert and record covenants in the conveyance and title documents of the property that the property is located in a special flood hazard area and is subject to flooding and flood damage. The covenants must contain statements attesting to all adverse effects resulting from the variance. The covenants must also state that the property owner or owners and assigns must not file any lawsuit or action against the County for costs or damages or any claim, and must indemnify and hold harmless the County from any liability when loss, damage, injury, or death occurs due to the flood hazard variance and flooding of the property. On approval of the flood hazard variance, covenants must be fully executed and submitted to the director for approval. On approval, the applicant must file the covenants with the bureau of conveyances.

C. In passing on variance applications, the board of variances and appeals must consider:

1. The danger that materials may be swept onto other lands to the injury of others.
2. The danger to life and property due to flooding or erosion damage.
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the existing owner and future owners of the property.
4. The importance of the services provided by the proposed facility to the community.
5. The necessity, if any, to the facility of a waterfront location.
6. The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.
7. The compatibility of the proposed use with existing and anticipated development.
8. The relationship of the proposed use to the community plan and floodplain management program for that area.
9. The safety of access to the property in time of flood for ordinary and emergency vehicles.

10. The expected heights, velocity, duration, rate of rise, and sediment transport of floodwaters expected at the site.

11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities, such as sewer, gas, electric, and water systems, and streets and bridges.

D. Conditions for variances.

1. Variances will be issued only upon a determination that the variance is peculiar to the property involved and is the minimum necessary to afford relief to the applicant with minimum deviation from the requirements of this chapter.

2. Variances will be issued only on (a) a showing of good and sufficient cause; (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, defraud or victimize the public, or conflict with existing County or State laws. Mere economic or financial hardship, or inconvenience, or aesthetic preferences, will not, by themselves, constitute a finding of exceptional hardship.

3. Variances will not be issued within any designated floodway if any increase in base flood levels would result.

4. Variances may be issued for new construction, substantial improvements, and other proposed new developments to be erected on a lot of one-half acre or less in size contiguous to, and surrounded by, lots with existing structures constructed below the base flood level, provided that the procedures of sections 16.29.050 and 16.29.060 have been fully considered. For lots greater than one-half acre, the technical justification required for issuing the variance must be greater.

5. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

6. If the provisions of subsection B are satisfied and the proposed structure or other development is protected by methods that minimize base flood damage and create no additional threats to public safety, variances may be issued for new construction, substantial improvements, and other

proposed new developments necessary for a purpose that cannot be performed unless located in close proximity to water, which is limited to docking facilities, port facilities necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but not long-term storage or manufacturing facilities.

7. On consideration of the factors of subsection B and the purposes of this chapter, the board of variances and appeals may attach conditions to the granting of a variance as it deems necessary to further the purposes of this chapter.

E. Any applicant to whom a variance is granted must be given written notice signed by the director that:

1. The issuance of a variance to construct a structure below the base flood level will likely result in substantially increased premium rates for flood insurance.

2. Construction below the base flood level increases risks to life and property.

A copy of the notice must be recorded by the applicant in the bureau of conveyances of the State of Hawaii in a manner that appears in the chain of title of the affected parcel.

F. The director will maintain a record of all variance actions, including justification for their issuance, and report the variances issued in its biennial report submitted to the Federal Insurance Administration and FEMA.

**16.29.160 Warning and disclaimer of liability.** A. The degree of flood and tsunami protection required by this chapter is considered reasonable for regulatory purposes and is based on standard engineering methods of study. Larger floods or tsunamis than the base flood as designated on the flood maps may occur on occasions, or flood or tsunami elevations may be increased by man-made or natural causes. This chapter does not imply that areas outside the flood hazard area will be free from flooding or damage.

B. This chapter must not create liability on the part of the County or any officer, official, or employee for any flood or tsunami damages that result from reliance on this chapter or any administrative decision lawfully made.

**16.29.170 Other laws and regulations.** All construction and improvements subject to this chapter must comply with other applicable laws and regulations.

**16.29.180 No exemptions.** Neither the County itself nor any agency, department, or division under its control will be exempted from compliance with the provisions of this chapter.”

SECTION 4. Section 16.18B.109, Maui County Code, is amended by amending subsection 109-2 to read as follows:

**“109-2. Electrical work within flood hazard districts and developments adjacent to drainage facilities.** Electrical work within flood hazard districts and developments adjacent to drainage facilities [shall be] are subject to chapter [19.62,] 16.29, Maui County Code [, as amended].”

SECTION 5. Section 16.20C.301.4, Maui County Code, is amended to read as follows:

**“16.20C.301.4 – Section 301.4 amended.** Section 301.4 of the Uniform Plumbing Code is amended to read as follows:

301.4 Flood Hazard Areas. Plumbing work within flood hazard areas must be subject to this code and chapter [19.62,] 16.29, Maui County Code, pertaining to flood hazard areas.”

SECTION 6. Section 19.39.090, Maui County Code, is amended by amending subsection D to read as follows:


“D. Height adjustments for special site conditions. The director of public works may adjust the building height envelope under the following conditions, so long as the adjustment is consistent with the purpose and intent of the applicable zoning district:

1. To permit reasonable building design on a site where unusual natural deviations in grade occur.
2. To allow up to five feet of additional height for dwellings on building sites with slopes of 40 percent or more on lots where there are no reasonable alternative building sites with less slope.
3. To allow up to five feet of additional height for buildings in the residential and multi-family districts where the floor level is required to be elevated above the design flood level as defined in chapter [19.62.] 16.29.”

SECTION 7. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 8. This Ordinance will take effect on September 1, 2024.

APPROVED AS TO FORM AND LEGALITY:

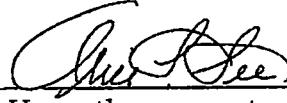


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Kristin K. Tarnstrom  
Department of the Corporation Counsel  
County of Maui

wai:misc:017abill01:jpp

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "James R. Lee". The signature is written in black ink and is positioned above a horizontal line.

Upon the request of the Mayor.



WE HEREBY CERTIFY that the foregoing BILL NO. 126, CD1 (2023)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 26th day of January, 2024, by the following vote:

Alice L. LEE Chair	Yuki Lei K. SUGIMURA Vice-Chair	Tom COOK	Gabriel JOHNSON	Natalie A. KAMA	Tamara A. M. PALTIN	Keani N. W. RAWLINS-FERNANDEZ	Shane M. SINENCI	Nohelani U'U-HODGINS
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 26th day of January, 2024.

DATED AT WAILUKU, MAUI, HAWAII, this 26th day of January, 2024.

RECEIVED

JAN 26 11:11 AM '24

OFFICE

ALICE L. LEE, CHAIR  
Council of the County of Maui

MOANA M. LUTEY, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS

DAY OF January 26, 2024.

RICHARD T. BISSEN, JR. MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. **5603** of the County of Maui, State of Hawaii.

MOANA M. LUTEY, COUNTY CLERK  
County of Maui

Passed First Reading on January 12, 2024  
Effective date of Ordinance **September 1, 2024**

RECEIVED

JAN 29 AM 9:31

OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. **5603**, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui

## Chapter 19.530 - ENFORCEMENT

## 19.530.010 - Compliance required.

Any approval or permit issued pursuant to the provisions of this title shall comply with all applicable requirements of this article.

(Ord. 2032 § 5 (part), 1991)

## 19.530.020 - Criminal prosecution.

- A. Any person convicted of a violation of this title shall be sentenced as follows:
1. For a first offense, by a fine not exceeding \$1,000 and one of the following:
    - a. Thirty-two hours of community service, as authorized by and defined in section 706-605(1)(f) of the Hawaii Revised Statutes, as amended, or
    - b. Forty-eight hours imprisonment.
  2. For a second offense which occurs within five years of any prior conviction for violation of this title, by a fine not exceeding \$1,000 and one of the following:
    - a. Sixty-four hours of community service as authorized by and defined in section 706-605(1)(f) of the Hawaii Revised Statutes, as amended, or
    - b. Ninety-six hours of imprisonment.
  3. For a subsequent conviction which occurs within five years of any two prior convictions under this title by a fine of not less than \$500 but not exceeding \$1,000 and one of the following:
    - a. Not less than sixty-four hours but not exceeding one hundred and forty hours of community service as authorized by and defined in section 706-605(1)(f) of the Hawaii Revised Statutes, as amended, or
    - b. Not less than ninety-six hours but not exceeding thirty calendar days imprisonment.
- B. After a conviction for a first violation under this title, each further day of violation shall constitute a separate offense if the violation is a continuance of the subject of the first conviction.
- C. The imposition of a fine under this section shall be controlled by the provisions of the Hawaii Penal Code relating to fines, section 706-641 through 706-645 of the Hawaii Revised Statutes.
- D. The county may maintain an action for an injunction to restrain any violation of the provisions of this title and may take any other lawful action to prevent or remedy any violation.
- E. Any personnel authorized by the director of public works may arrest, without warrant, alleged violators by issuing a summons or citation in accordance with the procedure specified in this section. Nothing in this section shall be construed as barring such authorized personnel from

initiating prosecution by penal summons, by complaint, by warrant or such other judicial process as is permitted by statute or rule of court.

- F. Any personnel authorized by the director of public works making an arrest for a violation of this title may take the name and address of the alleged violator and shall issue to the alleged violator a written summons or citation, notifying the alleged violator to answer at a place at a time provided in the summons or citation.
- G. There shall be provided for use by authorized personnel a form of summons or citation for use in citing violators of this title which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summons or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid under the laws and regulations of the state and the county.
- H. In every case when a citation is issued, the original of the same shall be given to the violator, provided that the administrative judge of the district court may prescribe the giving to the violator of a carbon copy of the citation and provide for the disposition of the original and any other copies.
- I. Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(Ord. 2032 § 5 (part), 1991)

#### 19.530.030 - Administrative enforcement.

In lieu of, or in addition to, enforcement by criminal prosecution, if the director of public works, the director of environmental management, the director of water supply, or the planning director determines that any person is violating or has violated any provision of titles 8, 12, 14, 16, 18, 19, and 20 of this code, any rules adopted thereunder, or any permit issued thereto, the director with jurisdiction over the relevant ordinance, rule, or permit, shall have the person served by mail with proof of mailing or personal delivery, with a notice of violation and order pursuant to this chapter and such administrative rules as the director may adopt. If service by mail or personal delivery fails, the director shall provide service by posting the notice of violation and order in a conspicuous place on the property where the violation is occurring or occurred, or at the last known address of the violator, or by publishing a notice at least once per week for two consecutive weeks in a newspaper of general circulation in Maui County.

- A. Contents of the notice of violation. The notice shall include at least the following information:
  - 1. Date of the notice.
  - 2. The name and address of the person noticed.
  - 3. The section number of the provision or rule, or the number of the permit that has been violated.

4. The nature of the violation.
  5. The location and date of the violation.
- B. Contents of the order.
1. The order shall require the person to do one or more of the following:
    - a. Cease and desist from the violation.
    - b. Correct the violation at the person's own expense before a date specified in the order.
    - c. Pay a civil fine not to exceed \$1,000 in the manner, at the place, and before the date specified in the order, except that the initial civil fine shall not exceed \$20,000 for the operation of a bed and breakfast home, short-term rental home, transient vacation rental, or other transient accommodation, without a permit that is required for the operation, unless a higher fine is authorized by State law.
    - d. Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order, except that the daily civil fine shall not exceed \$10,000 for the operation of a bed and breakfast home, short-term rental home, transient vacation rental, or other transient accommodation, without a permit that is required for the operation, unless a higher fine is authorized by State law.
    - e. Pay a civil fine not to exceed 1 percent of the project cost as provided in subsection 20.08.260(E)2 of this code.
  2. The order shall advise the person that the order shall become final unless an appeal is filed with the board of variances and appeals within thirty days after the date of its mailing or delivery.
- C. Effects of order; right to appeal. The provisions of the order issued by the director of public works, the director of environmental management, the director of water supply, or the planning director under this section shall become final unless an appeal is filed with the board of variances and appeals within the thirty-day period. However, an appeal to the board of variances and appeals shall not stay any provision of the order.
- D. Collection of unpaid civil fines. In addition to any other procedures for the collection of civil fines available to the county by law or rules of the court, the county may add unpaid civil fines as herein defined to any county taxes, fees or charges except for residential water or sewer charges.
- E. Judicial enforcement of order. The director of public works, the director of environmental management, the director of water supply, or the planning director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said

order, the director or agency need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been appealed in a timely manner nor paid.

(Ord. No. 5001, § 2, 2019; Ord. No. 3621, § 1, 2009; Ord. 2684 § 26, 1998; Ord. 2521 § 1, 1996; Ord. 2205 § 1, 1992; Ord. 2032 § 5 (part), 1991)