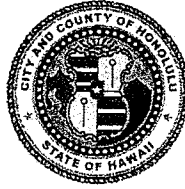


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR
DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR

June 8, 2022

The Honorable Tommy Waters
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Waters and Councilmembers:

SUBJECT: Amendments to Chapter 23, Revised Ordinances of Honolulu (ROH), Shoreline Setbacks and Chapter 25, ROH, Special Management Area (SMA)

The Department of Planning and Permitting is pleased to submit for your review and adoption two draft bills that update the Shoreline Setbacks Ordinance, Chapter 23, ROH, and the SMA Ordinance, Chapter 25, ROH.

The first reason for the amendments is housekeeping for conformity with the State of Hawaii Coastal Zone Management (CZM) regulations, Hawaii Revised Statutes (HRS) Chapter 205A. Act 16 (2020) amending HRS 205A provided additional protections against impacts of coastal hazards, including sea level rise (SLR) and coastal erosion, was signed into law by the Governor on September 15, 2020. The proposed Chapter 23 and 25, ROH, updates maintain regulatory consistency with the State's CZM regulations. Certain components, but not all, of HRS 205A are self-executing, so changes to HRS 205A need to be reflected in the City ordinances.

The second reason for the amendments is to incorporate guidance from the latest policy documents, scientific information, and best practices relating to SLR and other coastal hazards. These changes, including a revised shoreline setback, are designed to increase resiliency in our coastal areas, reduce hazards to people and buildings, and retain our beaches and shoreline areas.

DEPT. COM. 444

ZP

The Honorable Tommy Waters
Chair and Presiding Officer
and Members
June 8, 2022
Page 2

Enclosed you will find a Staff Report that explains the amendments. Should you have any questions, please contact me at (808) 768-8000.

Very truly yours,


Dean Uchida
Director

Enclosures

APPROVED:


Michael D. Formby
Managing Director

**Department of Planning and Permitting-Initiated Amendments to
Chapter 23 Shoreline Setbacks and
Chapter 25 Special Management Area, Revised Ordinances of Honolulu**

Staff Report

June 8, 2022

I. PURPOSE

This proposed amendment package will update the Shoreline Setbacks Ordinance, Chapter 23, Revised Ordinance of Honolulu (ROH), and the Special Management Area (SMA) Ordinance, Chapter 25, ROH.

The amendment package will result in two significant changes relating to lots within the SMA. The first is a housekeeping measure to maintain consistency with the State of Hawaii (State) Coastal Zone Management (CZM) regulations, Chapter 205A, Hawaii Revised Statutes (HRS), which was amended by the passing of Act 16 (2020). Act 16 (2020), signed into law by the governor on September 15, 2020 provides additional protections against impacts of coastal hazards including sea level rise and coastal erosion. Chapters 23 and 25, ROH, implement the State CZM regulations, so changes to HRS Chapter 205A need to be reflected in the City ordinances. As a result of these changes, all residential dwellings on shoreline lots and lots impacted by waves, storm surges, high tide, or shoreline erosion, will require SMA permits.

The second change is an increase to the shoreline setback, within which development is prohibited. The current shoreline setback is 40 or 60 feet, depending on the lot. We now propose a setback ranging from 60 feet to 130 feet, depending on historic erosion rates. This is based on the strategy currently used by both Maui and Kauai Counties. All lots will have a base setback of 60 feet. Additional erosion-based setbacks will be calculated based on the unique historic erosion data applicable to each zoning lot, as shown on the latest shoreline erosion data from the Hawaii Shoreline Study conducted by the Coastal Geology Group of the University of Hawaii (UH) School of Ocean and Earth Science and Technology (SOEST). Lots in areas without historic erosion, or where data is unavailable, will be subject to a shoreline setback of 60 feet. Similarly, due to the intensity of existing build out, the presence of critical public infrastructure, and the extensively modified shoreline within urban Honolulu, those lots within the *Primary Urban Center Development Plan* (DP) area will be subject to a 60-foot shoreline setback.

These changes are designed to increase resiliency in our coastal areas, reduce hazards to people and buildings, and retain our beaches and shoreline areas. Appendix I details sea level rise implications on Oahu and Appendix II describes the proposed shoreline setback measurements and the methodology for determining the location of a shoreline setback on a property.

Over the last several years, Department of Planning and Permitting (DPP) staff collaborated with the City's Climate Change Commission (CCC), the Office of Climate Change, Sustainability and Resiliency (CCSR), the UH SOEST, and the UH Sea Grant College Program (Hawaii Sea Grant) to ensure revisions to Chapters 23 and 25, ROH, reflect the latest policy documents, scientific information, and best practices relating to sea level rise and other coastal hazards. The CCC, CCSR, UH SOEST, and Hawaii Sea Grant have also introduced several long-term planning and policy documents along with mapping tools to provide landowners and planners with evidence-based information that will help protect public trust lands, the environment, and private property. If incorporated into Chapters 23 and 25, ROH, these policies will ensure that management of the shoreline area and SMA is based on the latest and best scientific resources available. In addition, the new online mapping tools will ensure that permitting decisions are more transparent and based on readily available data sources. Appendix III details the regulatory and policy framework relating to these issues and includes an in depth look at powerful new online mapping tools available to the public that can be used to analyze lots in the coastal zone.

II. PROPOSED ORDINANCE REVISIONS

The proposed changes to Chapters 23 and 25, ROH are shown in the two attached draft bills and are discussed below. One bill proposes amendments to Chapter 23, ROH, and the other bill proposes amendments to Chapter 25, ROH.

A. *Revisions for consistency with State CZM regulations*

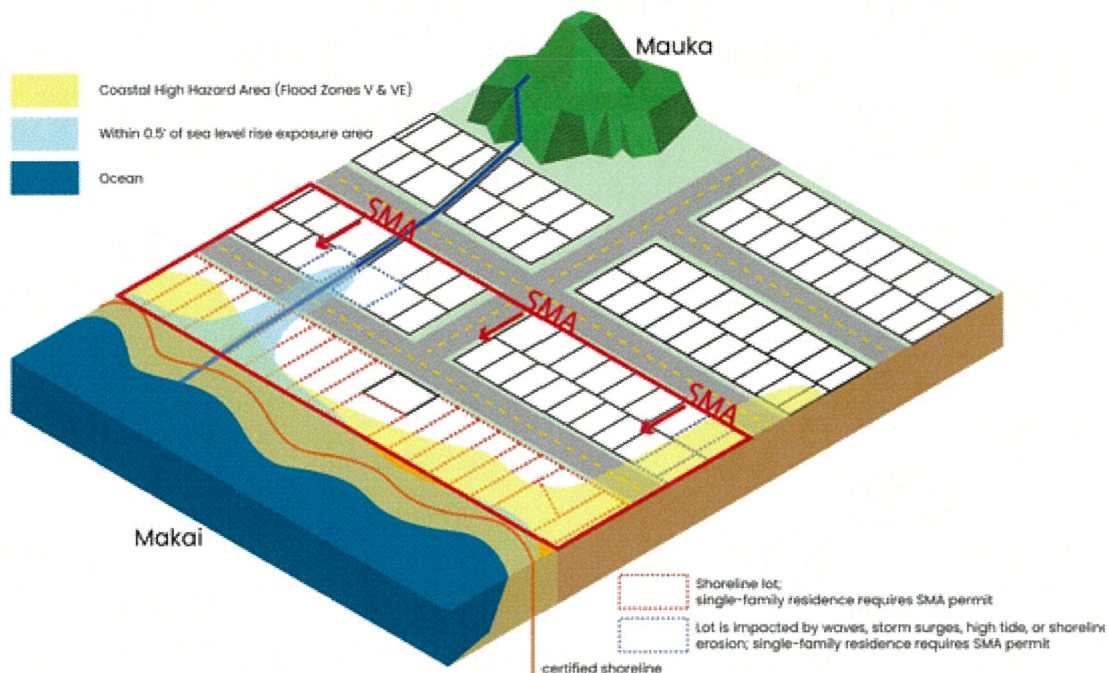
Revisions to Chapters 23 and 25, ROH, for consistency with Act 16 (2020) and Chapter 205A, HRS, include:

- *A more comprehensive definition of coastal hazards*, to include hurricanes, wind, storm surge, high tide, and sea level rise.
- *An expanded definition of protected beach areas* to include beaches, coastal dunes, and coral reefs.
- *Strong prohibitions against shoreline hardening* to protect and preserve beaches for public use, protect and restore coastal ecosystems, and further limit the number and type of structures placed in areas prone to coastal hazards.
- *A revised minimum shoreline setback* to ensure setbacks will no longer be reduced to less than 40 feet from the certified shoreline. The previous minimum setback was 20 feet in State law.
- *A revised definition of development for single-family residences* to require SMA permits for the construction or reconstruction of dwelling units, regardless of size or type, on shoreline lots or lots impacted by sea level rise, waves,

storm surge, high tide or shoreline erosion. A lot is considered to be impacted by waves, storm surges, high tide, or shoreline erosion if it is within Flood Zone V or VE or if it is within the 0.5-foot sea level rise exposure area, as shown on the following illustration:

Chapter 25: Special Management Area (SMA)

Impacts of Act 16 (2020) on Residential Permitting



B. Revisions to the Shoreline Setback Ordinance, Chapter 23, ROH (Bill 1)

For decades, the County's shoreline setback, within which development is restricted, has been set at 40 feet from the certified shoreline for most oceanfront properties, and 60 feet for oceanfront properties after a subdivision action. To ensure resiliency in the face of climate change, sea level rise, and the resultant changing coastal environment, and to be consistent with the latest scientific research and policy directives, we recommend increased shoreline setbacks as follows:

- Shoreline lots with a history of coastal erosion will be subject to a setback based on the erosion rate, measured as 60 feet plus 70 times the annual coastal erosion rate, up to a maximum setback of 130 feet. For example, a shoreline lot with 0.1 feet of erosion each year will be subject to a shoreline setback of 67 feet ($60 + 70 \times 0.1$). This is designed to capture erosion (0.1 feet per year) over the estimated life of the structure (70 years) plus a

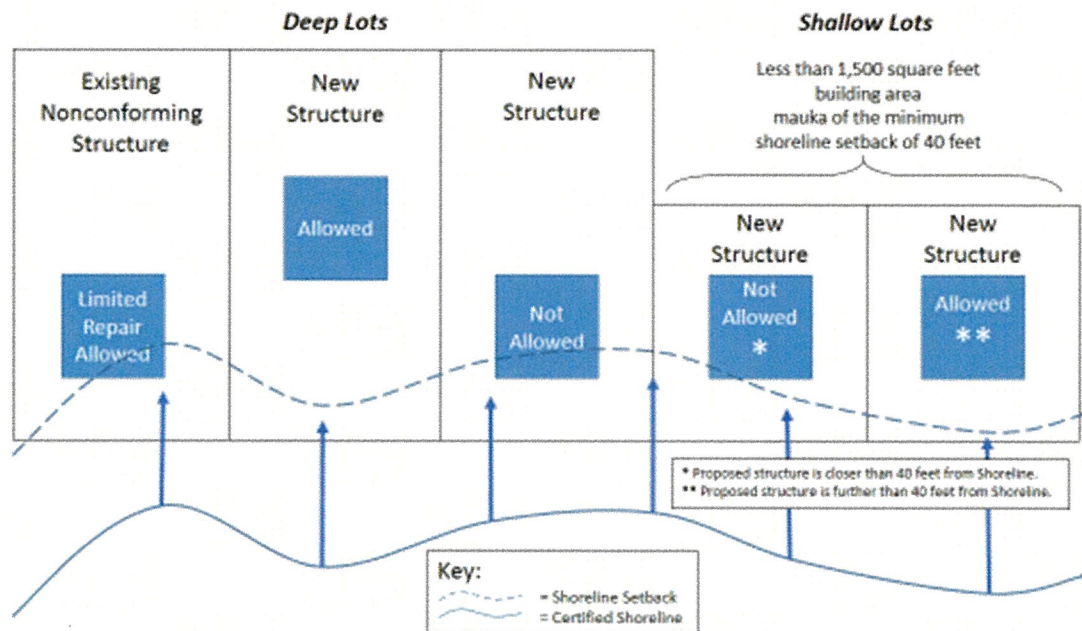
base setback of 60 feet. This is detailed further in Appendix II – Shoreline Setback Measurements and Methodology.

- Shoreline lots with no history of coastal erosion or with a history of accretion will be subject to a setback of 60 feet.
- Shoreline lots within the *Primary Urban Center DP* area and areas with no historic coastal erosion data will also be subject to a 60-foot shoreline setback.

Previously, State law and Chapter 23, ROH, allowed a reduction of the shoreline setback to 20 feet for very shallow lots. Act 16 (2020) revised the minimum setback from 20 feet to 40 feet inland from the shoreline, so this change is included in the draft bill. Recognizing that some properties are already severely eroded, we are proposing to give the DPP Director the authority to allow minimal construction in the area between 40 and 60 feet from the regulatory shoreline without a Shoreline Setback Variance. More specifically, the shoreline setback could be reduced just enough to ensure a 1,500-square-foot buildable area on the lot, and the structure would have to be placed in the farthest mauka location on the lot, as long as the minimum setback of 40 feet is maintained.

Chapter 23: Shoreline Setbacks

Building into the Setback



Also, in response to the public's growing interest in shoreline-related matters, the proposal removes all exceptions for public hearings. That is, under no circumstances may the Director waive a hearing associated with an application for a Shoreline Setback Variance.

Finally, in addition to the terminology and definitions added under Act 16 (2020), the DPP proposes various changes to clarify components of the Ordinance. These changes, such as adding definitions for “repair” and “reconstruction,” are intended to respond to questions regularly asked by applicants.

C. *Revisions to the SMA Ordinance, Chapter 25, ROH (Bill 2)*

Until 2011, construction and reconstruction of single-family residences within the SMA was not considered “development” unless it was part of a larger development (three or more dwelling units), so SMA permits were not required. In 2011, Chapter 205A, HRS, and Chapter 25, ROH, were amended so that construction or reconstruction of dwellings that exceed 7,500 square feet are considered “development.” Therefore, beginning in 2011, the DPP began requiring SMA permits for very large dwellings.

With the adoption of Act 16 (2020), the definition of “development” was further expanded to include construction or reconstruction of a single-family residence on a shoreline lot or a lot that is impacted by waves, storm surges, high tide, or shoreline erosion, regardless of the size of the residence. As a result, Chapter 25, ROH, must now be adjusted to reflect this change. We are further recommending that the language be clarified to apply to residential dwelling units in any layout – single-family, two-family, multi-family, caretaker units, ohana units, accessory units, and farm dwellings. Additionally, we propose revised language to specify that work on a zoning lot with an aggregate residential floor area of 7,500 square feet or more, including the dwelling unit or units, garages, carports, covered lanais, and accessory structures, is “development” anywhere in the SMA and would therefore require an SMA permit.

The changes initiated by Act 16 (2020) mean many more SMA permits – both major and minor – will be required for proposed development on residential lots. Major SMA Use permits will be transmitted to the City Council for action, as required under Section 25-3.2, ROH.

In addition to these changes, we further recommend the following:

- Add language relating to objectives and policies from Chapter 205A, HRS, instead of incorporating it by reference only.
- Require climate resilient design measures for dwellings proposed within the flood hazard zone or sea level rise exposure area.
- Add definitions recommended by the State’s Office of Planning and Sustainable Development (OPSD) of significant effect and cumulative impact.

- Specify that structures associated with agricultural activity dedicated to manufacturing, processing, or packaging facilities are considered “development.”
- Combine the exemptions relating to subdivision actions into a single “subdivision exemption” where no associated development is proposed.
- Clarify when structural and nonstructural improvements to existing single-family residences are exempt. Remove the allowance for additional dwelling units. Allow minor accessory structures (non-dwelling dwelling) and additions up to 300 square feet on lots where residential development would otherwise require SMA permits.
- Disallow the concurrent processing of SMA permits and environmental disclosure documents.
- Incorporate the language relating to wetlands into various appropriate locations and remove duplicative sections.
- Reorganize and streamline sections relating to permit requirements, review guidelines, significance criteria, permit processing procedures, application requirements, updated fees, and conditions for development.

III. PUBLIC OUTREACH

The proposed revisions are likely to result in a period of learning and adjustment as property owners adapt to the new regulatory standards. As such, we are proposing that the new formula associated with the shoreline setback become effective on January 1, 2024.

Appendix IV includes a detailed summary of various public agency outreach to the community related to coastal zone policies. In addition to the outreach that has already occurred, the DPP is utilizing grant money issued to the CCSR by the Federal Emergency Management Agency (FEMA) and from the State Office of Planning and Sustainable Development (OPSD) to facilitate community education and provide assistance in navigating the new scientific resources, mapping tools, and regulatory framework.

The FEMA funds have already been used to hire a coastal planning manager to assist and educate property owners. This person is a contract employee attached to the DPP. Specifically, this manager is tasked with helping people (one-on-one and in groups) understand the new regulations, what permitting is necessary and when, and what options they may have. The specialist will also draft updated administrative rules that will help operationalize the ordinance changes, create new instructions for permits, and draft permit templates to streamline permitting. It is anticipated the position will be

short-term in nature (one and a half to two years), but may be converted to a long-term position should additional funding become available. The OPSD funds are being used to create short videos that can be shown during Neighborhood Board meetings that describe the current and proposed regulations, and to prepare images and text for a website that explains the regulatory framework to property owners.

IV. RECOMMENDATION

The proposed revisions will help to:

- Better preserve and protect the coastline and beaches of Oahu for both residents and visitors to Oahu;
- Add protections for beaches, beach dunes, wetlands, and other backshore areas to maintain the natural sand and sediment transport processes needed to naturally replenish public trust lands;
- Ensure public safety by prohibiting the development of new habitable structures in areas that are vulnerable to coastal hazards;
- Minimize damage and expenses and public health risks over time by reducing the level of development and hardening in shoreline areas; and,
- Allow for a minimum buildable area on shallow shoreline lots, as well as some repair and maintenance of existing structures.

The DPP has prepared and supports approval of the attached bills in order to remove inconsistencies between Chapters 23 and 25, ROH and the HRS; to codify the latest legislative amendments; to incorporate policies and guidance developed by the State of Hawaii's OPSD, the City's CCC and CCSR, the UH SOEST, and Hawaii Sea Grant; and to better protect our shoreline from sea level rise and other coastal hazards. The DPP recognizes that there are many other ways that the City will need to adapt to rising seas and climate change, including both regulatory mechanisms and physical improvements to infrastructure and the like. The proposals contained in the attached bills are only part of the response toward greater resiliency.

ATTACHMENTS

Appendix I - Sea Level Rise Implications

Appendix II - Shoreline Setback Measurements and Methodology

Appendix III - Regulatory and Policy Framework and New Evaluation Tools

Appendix IV - Community Research and Outreach

Draft Bills relating to Shoreline Setbacks and Special Management Area

Appendix I. SEA LEVEL RISE IMPLICATIONS ON OAHU

The beaches of Hawaii are vital economic, environmental, and cultural resources. According to the City's Office of Climate Change, Sustainability and Resiliency (CCSR), a healthy, wide sandy beach provides some mitigation of the effects of storm surge, flooding, and high surf. Oahu has approximately 66 miles of sandy shoreline and beaches. Since 1949, approximately 25 percent of Oahu's sandy beaches have narrowed or been completely lost due to artificial hardening of the shoreline, and at least 60 percent of Oahu's beaches are chronically eroding. Typical erosion rates in Hawaii are in the range of 5.9 to 11.8 inches per year, and erosion continues to be the general trend for Oahu's beaches over both the long-term and short-term. These trends and historical development patterns threaten both the loss of these shoreline protection and recreation systems, as well as coastal development island wide, as erosion increases with sea level rise, and therefore typical high wave action and storm surge result in greater impacts.

According to the City's Climate Change Commission's *Sea Level Rise Guidance*, mean sea levels are anticipated to rise 3.2 feet by the end of this century and possibly sooner, with impacts from high tides and high waves experienced decades earlier. The State's 2017 *Hawaii Sea Level Rise Vulnerability and Adaptation Report* estimates that permanent and annual flooding will impact over 13,000 residents, 9,400 acres of land, 3,800 structures, and 17.7 miles of major roads on Oahu, affecting of \$13 billion worth of land and structures (2013 values). High tide flooding can already be observed across Oahu in low-lying areas, along chronically eroding shorelines, and along coastal highways.

Studies conducted by University of Hawaii's School of Ocean and Earth Science and Technology (SOEST) and Hawaii Sea Grant researchers have concluded that the City's existing setback policy has not sufficiently protected shorefront development and beach environments. Insufficient setbacks have also resulted in environmental damage to beach ecosystems and hinder access to public trust recreational and cultural resources. By their estimate, over five miles of Oahu beaches have been completely lost to erosion and construction of shoreline armoring (seawalls, rock revetments).

According to the State's Department of Business, Economic Development and Tourism, tourism makes up 21 percent of the State's economy, the largest single source of capital for Hawaii's economy. The tourism industry routinely touts Hawaii's weather, cultural experiences, beautiful beaches, diverse natural areas, and unique marine wildlife as some of the primary reasons to visit. Should these resources disappear or become damaged beyond repair, the tourist economy would likely also decline. Sea level rise threatens these shoreline resources for both residents and visitors. Sea level rise also threatens traditional and customary practices, including fishpond maintenance, cultivation of salt, and gathering from the nearshore fisheries. Further, increased

flooding as a result of sea level rise results in increased damage to roads, buildings, and drainage systems, and the associated health, access, and monetary costs to address these damages.

The proposed amendments to Chapters 23 and 25, Revised Ordinances of Honolulu, will help to minimize these damages and their associated expenses and public health risks over time by reducing the level of development and hardening along shoreline areas. Further, the proposed increases to minimum shoreline setbacks and added protections for beach dunes, wetlands, and other backshore areas is anticipated to help maintain the natural sand and sediment transport processes needed to naturally replenish public trust beaches.

Additional Resources

- Tavares, K., Fletcher, C.H. & Anderson, T.R. 2020. "Risk of shoreline hardening and associated beach loss peaks before mid-century: Oahu, Hawaii." *Nature Scientific Reports*, 10: 13633 [<https://doi.org/10.1038/s41598-020-70577-y>]
- Fletcher, C.H., Romine, B.M., Genz, A.S., Barbee, M.M., Dyer, M., Anderson, T.R., Lim, S.C., Vitousek, S., Bochicchio, C., and Richmond, B.M. (2012)., "National assessment of shoreline change: Historical shoreline change in the Hawaiian Islands: U.S. Geological Survey, Open-File Report 2011-1051, 55 pp. (Also available at <http://pubs.usgs.gov/of/2011/1051/>)
- Genz, A.S., Fletcher, C.H., Dunn, R.A., Frazer, L.N., and Rooney, J.J. (2007). "The predictive accuracy of shoreline change rate methods and alongshore beach variation on Maui, Hawaii." *Journal of Coastal Research*, 23(1), pp. 87-105.
- Romine, B.M., Fletcher, C.H., Frazer, L.N., Genz, A.S., Barbee, M.M., and Lim, S.C. (2009). "Historical shoreline change, southeast Oahu, Hawaii: Applying polynomial models to calculate shoreline change rates." *Journal of Coastal Research*, 2009(256): 1236-1253.
- Honolulu Climate Change Commission (2019). "Shoreline Setback Guidance: ROH Ch. 23." <https://resilientoahu.org/climate-change-commission/#guidance>

Appendix II. SHORELINE SETBACK MEASUREMENTS AND METHODOLOGY

Under the proposal presented within the draft bill for Chapter 23, Revised Ordinances of Honolulu, the shoreline setback will be either 60 feet or calculated on a site-specific basis that reflects historic erosion rates, as explained below.

The fixed 60-foot requirement reflects the City's current minimum setback for new subdivision lots on the shoreline. A 60-foot setback will apply to:

- Zoning lots that have no documented historic erosion;
- Zoning lots that are accreting; and
- Zoning lots within the *Primary Urban Center Development Plan* (PUC DP) area.

In contrast, zoning lots that have a documented historic erosion rate will be subject to an erosion-based shoreline setback. It will be calculated as follows: 60 feet from the certified shoreline plus 70 times the site-specific erosion rate. The erosion-based formula uses the average 70-year average lifespan of a wood-frame house combined with erosion rates derived from a multi-decadal observational time series of historical shoreline positions established by University of Hawaii School of Ocean and Earth Science and Technology (SOEST). The formula was designed to identify a data driven setback distance that will provide protection from chronic erosion at a given lot for a period of 70 years. This formula was established in close collaboration with staff from the City's Climate Change Commission, the Office of Climate Change Sustainability and Resiliency, SOEST, and the UH Sea Grant College Program.

Different regions of Oahu are affected differently by climate change and sea level rise. The proposed setbacks take this into account. Site conditions, such as historical erosion rates, exposure to wave action, geologic and topographic differences, and the presence or absence of shoreline hardening structures, vary from lot to lot. For example, some areas with low levels of wave action may tend to have a very low annual erosion rate, such that the addition of the 70-year annual rate to the 60-foot setback minimum will not be a large (wide) area. In other areas, such as those where the adjacent beach has already been lost to erosion, or those subject to high wave action, the annual erosion rate may be higher, and therefore the minimum setback line will be farther mauka. These areas are anticipated to be more vulnerable to adverse coastal hazards impacts as a result of sea level rise. Use of existing, mapped historical shoreline erosion data along with a standard minimum setback distance is intended to mitigate potential impacts of sea level rise, and provide a transparent and simple formula for property owners.

That said, there are also areas where historical shoreline mapping data also indicates accretion over time. These areas, therefore, would not have an annual erosion rate to add to the 60-foot minimum setback area. Further, most of the shoreline in the *PUC DP* area is built-out, urbanized, and artificially hardened, and therefore, no application of an erosion rate in addition to the 60-foot minimum setback is proposed.

It should be noted, however, that sea level rise has been increasing exponentially, rather than at a linear rate. As such, even with the application of the proposed erosion-based setback formula, the level of protection from sea level rise and related coastal hazards is likely underestimated (i.e. less than 70 years). As a result, the scientists tell us that the proposed setback formula is considered a conservative estimate. For comparison purposes, the proposed setback formula is similar to the erosion rate-based setbacks that have been adopted by Maui County and Kauai County.

On Kauai, the shoreline setback is:

- 40 feet from the certified shoreline plus a distance of 70 times the annual coastal erosion rate plus a 20 feet safety buffer measured from the shoreline for lots with a depth less than 140 feet.
- For lots with an average depth of 140 to 220 feet, the greater distance of the two applies: 40 feet plus 70 times the annual coastal erosion rate plus 20 feet, or taking the average lot depth, subtracting 100 feet, dividing by 2 plus 40 feet.
- For lots with an average lot depth over 220 feet, the greater of the two shall apply: 40 feet plus 70 times the annual erosion rate plus 20 feet, or a setback line of 100 feet from the shoreline.

On Maui, all lots have a shoreline setback that is the greater of:

- 25 feet from the certified shoreline plus a distance of 50 times the annual erosion hazard rate.
- Based on the lot depth:
 - Lots with average depth of 100 feet or less shall have a setback of 25 feet.
 - Lots with average depth greater than 100 feet but less than 160 feet, shall have a setback of 25% of the average lot depth, but not greater than 150 feet.
- For irregularly shaped lots, the setback will be equivalent to 25% of the lot depth as determined by the Director of Planning to a maximum of 150 feet.

Appendix III. REGULATORY AND POLICY FRAMEWORK AND NEW EVALUATION TOOLS

I. ***Coastal Zone Management Regulations***

The Federal Coastal Zone Management Program was created through passage of the Coastal Zone Management (CZM) Act of 1972. It provided a basis for protecting, restoring and responsibly developing the nation's diverse coastal communities and resources. Hawaii's CZM Program was enacted in 1977 to administer laws and regulations relating to Chapter 205A, Hawaii Revised Statutes (HRS). The State CZM area encompasses the entire state and extends seaward to the limit of the State's police power and management authority, including the territorial sea. The State CZM law requires all agencies to assure their statutes, ordinances, rules, and actions comply with the CZM objectives and policies, to provide consistency between both State and County actions in dealing with ecosystem-level impacts that may result from proposed land use and water use activities.

To implement the State CZM law, the City and County of Honolulu adopted Chapter 23, Revised Ordinances of Honolulu (ROH), the Shoreline Setback Ordinance, and Chapter 25, ROH, the Special Management Area (SMA) Ordinance. The purpose of the Shoreline Setback Ordinance is to protect and preserve the natural shoreline, public pedestrian access, and open space along the shoreline and to reduce hazards to property from coastal flooding. With very few exceptions, development within the shoreline setback area is prohibited unless a Shoreline Setback Variance is obtained.

The purpose of the SMA is to manage development to preserve, protect, and restore the natural resources of the coastal zone of Hawaii, to ensure adequate public access, to avoid damage to wetlands, and to protect wetlands. Any development within the SMA requires an SMA Permit.

II. ***Long Range Planning***

1. Hawaii State Planning Act

The *Climate Change Adaptation Policy Guidelines* of the Hawaii State Planning Act (Section 226-109, HRS) support planning and preparing for future disruptions and dislocations due to climate change. For example, the *Guidelines*:

- Encourage the preservation and restoration of natural landscape features, such as coral reefs, beaches and dunes, forests, streams, floodplains, and wetlands, that have the inherent capacity to avoid, minimize, or mitigate the impacts of climate change;
- Use management and implementation approaches that encourage the continual collection, evaluation, and integration of new information and strategies into new and existing practices, policies, and plans; and

- Encourage planning and management of the natural and built environments that effectively integrate climate change policy.

2. Oahu General Plan

The *General Plan*, most recently amended on December 1, 2021 pursuant to the adoption of Resolution 21-23, CD1, by the Honolulu City Council, sets forth the long-range objectives and policies for the City's general welfare and, together with regional plans, provides a direction and framework to guide the programs and activities of the City. In support of Chapters 23 and 25, ROH, the Natural Environment and Resource Stewardship Element of the *General Plan* contains policies that seek to protect and enhance Oahu's natural attributes by increasing public awareness and appreciation, and mitigating against degradation of these assets. For example:

- Policy A.4 requires development projects to “*give due consideration to natural features such as slope, inland and coastal erosion, flood hazards, water-recharge areas, and existing vegetation, as well as to plan for coastal hazards that threaten life and property;*” and
- Policy A.5 requires “*sufficient setbacks from Oahu's shorelines to protect life and property, preserve natural shoreline areas and sandy beaches, and minimize the future need for protective structures or relocation of structures.*”

The Public Safety and Community Resilience element of the *General Plan* contains policies regarding the protection of people and property from natural disasters and other unsafe conditions. For example, Policy B.2 states all developments in areas subject to floods and tsunamis, and coastal erosion should be located and constructed in a manner that will not create any health or safety hazards or cause harm to natural and public resources.

The *General Plan* also incorporates new analyses, objectives and policies addressing climate change, sea level rise, and sustainability. For example, Objective B of the Physical Development and Urban Design Element calls for: (a) integrating climate change adaptation into the planning, design, and construction of all significant improvements to and development of the built environment; (b) coordinating plans in the private and public sectors that support research, monitoring, and educational programs on climate change, and preparing for the anticipated impacts of climate change and sea level rise on existing communities and facilities through mitigation, adaptation, managed retreat, or other measures in exposed areas.

3. Development Plans and Sustainable Communities Plans

The County's eight regional plans, known as Development Plans (DPs) and Sustainable Communities Plans (SCPs), provide a detailed vision of both development and preservation to guide land use and infrastructure decisions to a

planning horizon of 20 to 25 years. The following plans have recently been updated:

- *East Honolulu SCP*, adopted by the City Council on April 14, 2021 as Ordinance No. 21-11;
- *Koolau Loa SCP*, adopted by City Council on February 11, 2021 as Ordinance No. 21-1; and
- *Ewa DP 2013* was adopted by the City Council on December 23, 2020 as Ordinance No. 20-46.

The updated plans incorporate guidance in regard to addressing coastal hazards, climate change, and sea level rise in their respective regions. For example, the *Koolau Loa SCP* includes the following policies and guidelines:

- *Provide adequate shoreline setbacks that consider shoreline changes resulting from erosion hazards and rising sea levels, based on adopted projections of shoreline erosion rates and sea level rise;*
- *To the extent possible, acquire shallow developed beach-front lots which would be impractical to redevelop given existing zoning standards or wave hazard considerations in order to improve public access and lateral shoreline views along Kamehameha Highway;*
- *Establish additional minimum setbacks for structures near the shoreline in erosion hazard areas, and implement other management strategies to protect unstable sandy beach areas that impact Kamehameha Highway along the Kaaawa, Punaluu and Hauula shorelines;*
- *Adopt development standards that require new structures along the shoreline to incorporate structural and design elements compatible with coastal hazards such as coastal erosion, tsunami and hurricane overwash; and*
- *Incorporate best available science and information from the City Climate Change Commission when evaluating updates to land use policies and regulations relating to climate change and sea level rise.*

The Open Space Preservation and Development section of the 2020 amended *Ewa DP* includes the following guidelines:

- *Provide, at a minimum, a 60-foot setback along the shoreline, and, where possible, expand the setback to 150 feet where justified, based on historic or adopted projections of shoreline erosion rates; and*
- *Analyze the possible impact of sea level rise for new public and private projects in shoreline areas and incorporate, where appropriate and feasible, measures to reduce risks and increase resiliency to impacts of sea level rise.*

4. Other Guidance

The City's *Climate Adaption Background Research* (2020) documents contain best practices and local initiatives on stormwater management, sea level rise and flood protection, transitions between buildings and streets, and mitigation for extreme heat. *Climate Adaption Design Principles for Urban Development* (2020) provides principles intended to guide policy and regulation for property in urban areas that may be vulnerable to sea level rise and other climate change-related hazards. Included in the document are tools that, once incorporated, will help building sites and structures be more resilient to sea level rise, flooding, extreme heat, and groundwater inundation.

III. ***Policy Directives and Related Publications***

As initially mandated by Act 83 (2014) and expanded by Act 32 (2017), the Hawaii Climate Change Mitigation and Adaptation Initiative, several new studies, directives, and policy documents have recently been developed; some have been adopted by the City Council. These efforts and tools provide vital science-based guidance to help prepare Oahu for climate change and sea level rise. The following is a summary of how City and State entities are facilitating the implementation of these laws.

1. State Climate Change Mitigation and Adaptation Commission

The State's *Hawaii Sea Level Rise Vulnerability and Adaptation Report* (2017) provides a state-wide assessment of Hawaii's vulnerability to sea level rise and recommendations to reduce our exposure and sensitivity to sea level rise and increase our capacity to adapt. The report combines the best available science on climate change and sea level rise from sources such as the Intergovernmental Panel on Climate Change (IPCC), the National Oceanic and Atmospheric Administration (NOAA), the National Aeronautics and Space Administration (NASA), the UH, as well as the best-available peer-reviewed scientific research articles, and emerging good practices as framed through extensive stakeholder consultations. The report provides methodology, vulnerability assessments, and recommendations to plan for 3.2 feet of sea level rise by 2100, or, based on updated data, as soon as 2060.

In 2020, the Hawaii Climate Change Mitigation and Adaptation Commission endorsed two supplemental documents, prepared by Hawaii Sea Grant and the State of Hawaii Department of Land and Natural Resources (DLNR). The first, *Guidance for Addressing Sea Level Rise in Community Planning in Hawaii*, is intended to assist local government planners in integrating sea level rise adaptation plans and policies into State, County, and community plans. The second, *Guidance for Using the Sea Level Rise Exposure Area in Local Planning and Permitting Decisions*, was developed in response to requests from County planning departments and other stakeholders to provide further guidance on utilizing the Sea Level Rise Exposure Area (SLR-XA) in planning and permitting

decisions while improving understanding of the methods, assumptions, and limitations of the data.

2. State Office of Planning and Sustainable Development, Coastal Zone Management Program (CZMP)

In 2019, in response to the data pertaining to sea level rise and likelihood of rising seas damaging properties near the shoreline and adversely impacting our coastal zone, the State Office of Planning and Sustainable Development (OPSD) CZMP released a report entitled *Assessing the Feasibility and Implications of Managed Retreat Strategies for Vulnerable Coastal Areas in Hawaii - Final Report*. The report provides a multi-prong assessment regarding the feasibility of retreat from the coast as a strategy to address climate change and sea level rise in Hawaii.

The OPSD also developed new draft guidance pertaining to cumulative impacts and significant effects in the SMA. The draft guidance recommends counties apply temporal and spatial parameters to past, present, and reasonably foreseeable projects to evaluate the potential impacts of a proposed action on SMA resources. This guidance is contained in the revised Chapter 25, ROH.

3. City Office of Climate Change Sustainability and Resiliency (CCSR)

As mandated by Section 6-107 of the City Charter, the CCSR is tasked with tracking climate change science and potential impacts on City facilities, coordinating actions and policies of departments within the City to increase community preparedness, developing resilient infrastructure in response to the effects from climate change, and integrating sustainable and environmental values into City plans, programs, and policies. In support of these objectives, the CCSR developed the City's *Oahu Resilience Strategy* (2019), which identifies actions to address the impacts of the current climate crisis. The strategy recommends revisions to Chapters 23 and 25, ROH, and revised shoreline management rules to further reduce risk and damages to property and structures and help protect people from the impacts of coastal hazards and climate change, especially sea level rise, erosion, and storm surge.

The CCSR is also required by the City Charter to produce a transparent and annual accounting of metrics associated with City progress on key sustainability initiatives. This report gathers in one place the commitments of our City and establishes specific performance indicators that reflect a range of climate change, sustainability, and resilience activities taking place across the island of Oahu. The CCSR most recently published the City's *2021 Annual Sustainability Report*.

Pursuant to Resolution No. 18-221, CD1, FD1, adopted by City Council in 2018 and further codified by Ordinance No. 20-47 in 2020, the CCSR released the City's 2020-2025 Climate Action Plan (CAP), *One Climate One Oahu*, which provides a roadmap for City and State energy and climate goals.

4. City Climate Change Commission (CCC)

Pursuant to Section 6-107(h) of the City Charter, the City's CCC is charged with gathering the latest science and information on climate change impacts to Hawaii and providing advice and recommendations to the Mayor, City Council, and executive departments. To date, the CCC has provided the following guidance documents:

- *Climate Change and Social Equity* (December 2020)
- *Climate Change and Financial Risk* (July 2020)
- *One Water for Climate Resiliency White Paper* (June 2020)
- *Shoreline Setback Guidance* (December 2019)
- *Sea Level Rise Guidance* (2018)
- *Climate Change Brief* (2018)

The *Shoreline Setback Guidance* document, in particular, details how Chapter 23, ROH, could be revised to address increasing climate knowledge and shoreline risk information. The attached proposed bill Relating to Shoreline Setbacks incorporates this guidance.

5. City Office of the Mayor

The Mayor's Directive No. 18-2, issued on July 16, 2018, requires all City departments and agencies to use the *Hawaii Sea Level Rise Vulnerability and Adaptation Report*, the *Sea Level Rise Guidance* and the *Climate Change Brief* in planning decisions. As a result, proposed development activities within the SMA are evaluated for current and future susceptibility to coastal hazards such as flooding, sea level rise, wave action, tsunami, and storm surge. Furthermore, Procedure 6 of the Directive specifically requires proposing revisions for Chapters 23 and 25, ROH. The two attached bills implement the Mayor's Directive No. 18-2.

6. City Department of Emergency Management

In 2019, the City's Department of Emergency Management released the City's *2019 Multi-Hazard Pre-Disaster Mitigation Plan (Hazard Mitigation Plan)*, which lays out long-term strategies to reduce the impacts of future disaster events on people, property, and the environment. This plan identifies risks to communities that may occur as a result of natural hazards, and recommends hazard mitigation actions and policies to minimize these risks, like developing erosion rate-based shoreline setbacks and other risk reduction amendments to SMA regulations. The attached bills are intended to reduce the hazards to life, property, and the environment, as recommended in the *Hazard Mitigation Plan*.

IV. ***New Evaluation Tools***

Several new mapping tools can assist the public and DPP in evaluating the potential impacts of sea level rise for land use planning and permit review purposes. These mapping tools can be used collectively to establish a more comprehensive picture of potential coastal hazards impacts in a given region of Oahu and/or at a proposed development site. It should be noted that these tools do not include modeling of how coastal hazards are likely to be cumulatively exacerbated by ongoing sea level rise over time.

1. *State of Hawaii Sea Level Rise Viewer*
(<https://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>)

The *Hawaii Sea Level Rise Viewer* was prepared and is hosted online by the Pacific Islands Ocean Observing System (PacIOOS), through coordination by the Hawaii Sea Grant program and the State's DLNR for the Hawaii Climate Change Mitigation and Adaptation Commission. This mapping provides an online interactive atlas to support the State's 2017 *Hawaii Sea Level Rise Vulnerability and Adaptation Report*. It depicts projections of future hazard exposure and assesses vulnerabilities due to sea level rise of up to 3.2 feet (the SLR-XA), within the latter half of this century. Updates to the *Hawaii Sea Level Rise Viewer* were completed in January 2021. They include, but are not limited to, a Tax Map Key and address search tool and parcel boundary layer, updated erosion hazard projections, and a passive (high tide) flooding layer with six feet of sea level rise from the *NOAA Sea Level Rise Viewer*. The *Hawaii Sea Level Rise Viewer* is one of the primary tools used in SMA permit and Shoreline Setback Variance decisions.

2. *NOAA Sea Level Rise Viewer* (<https://coast.noaa.gov/slr/>)

The *NOAA Sea Level Rise Viewer* reflects scenarios of up to ten feet of passive sea level rise, flooding, marsh migration, and vulnerability levels for the nation, including the main Hawaiian islands.

3. *NOAA Storm Surge Flooding Vulnerability Mapping Tool*
(<https://www.nhc.noaa.gov/nationalsurge/>)

The NOAA storm surge mapping tool was developed to help people living in hurricane-prone coastal areas evaluate their risk of inundation by storm surge from Category 1 through 4 hurricane events. Storm surge is defined as the abnormal rise of water generated by a storm, over and above the predicted astronomical tides. Flooding from storm surge depends on many factors, such as the track, intensity, size, and forward speed of the hurricane and the characteristics of the coastline where it comes ashore or passes nearby.

4. *Hawaii Shoreline Study Web Map*
(<https://www.soest.hawaii.edu/coasts/index.php/resources/hawaii-shoreline-study-web-map/>)

The Hawaii Shoreline Study Web Map was created by the UH SOEST Coastal Geology Group to visualize and share data from the Hawaii Shoreline Study, provide shoreline change data to the public, and assist in decision-making. The web map contains data layers showing the low water mark, the vegetation line, historical shoreline transects, anticipated future shoreline transects, and future erosion hazard zones. It is updated as new data becomes available. The historical shoreline transects, in particular, are proposed for use in determining the erosion-rate-based setbacks associated with Chapter 23, Revised Ordinances of Honolulu.

Appendix IV. COMMUNITY RESEARCH AND OUTREACH

A significant amount of public outreach associated with the impacts of sea level rise has occurred over the past few years. Should the proposed revisions to Chapters 23 and 25, Revised Ordinances of Honolulu (ROH), be adopted, plans are in place to assist the public with new permitting procedures.

A. City Department of Planning and Permitting (DPP) Outreach

As part of outreach for recent updates to the regional Development Plans (DPs) and Sustainable Community Plans (SCPs), DPP staff have gathered community input regarding sea level rise. For example, as part of the comprehensive update to the *Primary Urban Center DP*, the DPP held a series of pop-up workshops all across the area. The purpose of the pop-ups included:

- Sharing information regarding the existing impacts;
- Seeking community input on what policy responses DPP should pursue; and,
- Discussing the pros and cons of adapting to sea level rise.

Conclusions reached as a result of these engagements indicated that in regard to addressing sea level rise, the strongest public support was for green infrastructure, design standards, and development restrictions, including low-impact development (90 percent support) and resilient design standards (75 percent support). Less popular strategies were those that had the potential to cost significant public money, have negative equity impacts, or were relatively complex concepts. Private sea walls were by far the least popular adaptation strategy due to the toll on beaches, which is in line with the State's Act 16 (2020) amendments to Chapter 205, HRS, as well as the currently proposed amendments to Chapters 23 and 25, ROH.

As another example, as a part of the *East Honolulu SCP* update, the DPP held a series of workshops on climate adaptation and hazard management in 2016 in coordination with experts from the University of Hawaii (UH) and Hawaii Sea Grant. The purpose of the workshops was to provide information about potential impacts of climate change on Oahu; relate climate adaptation to other community planning activities; discuss examples of potential "low regrets" adaptation activities; identify information gaps to explore; and identify next steps. These workshops enabled the speakers to share new mapping tools, planning and design principles, and other resources and concepts being considered by the DPP as part of the *East Honolulu SCP* updates. They also generated a good deal of local-specific regional knowledge regarding current and historical areas of vulnerability based on existing infrastructure, historic tsunami and flood events, and regional topography.

Most recently, DPP held a series of public workshops and a virtual open house as part of the *North Shore SCP* update. The key issues related to climate change and resilience were impacts from sea level rise including coastal erosion threatening homes,

infrastructure and beaches; seawalls and shoreline hardening impacting public beaches and access; and increased severity and frequency of storms and flooding.

B. City Office of Climate Change Sustainability and Resiliency (CCSR) Outreach

Two CCSR initiatives contributed to the attached two bills. They include the *Oahu Resilience Strategy* and the on-going climate adaptation strategy project, *Climate Ready Oahu*. The *Resilience Strategy* was developed between 2017 through 2019, where grassroots residents and community leaders helped shape the priorities and craft the actions that form the body of the strategy. The strategy was built through more than 220 engagement activities, including all 33 neighborhood boards, and direct survey inputs from more than 2,300 individuals representing a range of Honolulu's geographical, ethnic, gender, and age diversity. The Oahu Resilience Strategy was adopted by the City Council in October 2019 as a guiding policy document for the City (Resolution No. 19-233). The attached two bills implement Action 29, "Protect Beaches and Public Safety with Revised Shoreline Management Rules," of the Resilience Strategy.

The Oahu Resilience Strategy involves a climate adaptation strategy called *Climate Ready Oahu*. This effort is supported by a Community Advisory Hui of more than 40 stakeholders across the business, environment/culture, and community/education sectors. Through May 2021 CCSR has held three Community Advisory Hui meetings; three rounds of community workshops; three interdepartmental workshops; and participated in additional invited presentations and news stories highlighting the work. The attached two bills advance Resilience Action 29 and the *Climate Ready Oahu* project.

C. City Climate Change Commission (CCC) Outreach

The City CCC hosted its first meeting in February 2018. Through July 2021, the CCC has held over 30 meetings during which its guidance documents were formulated. Past meetings have included discussions with State and City agencies, private industry experts, research and academic experts, and leaders from other jurisdictions in addition to public and community testimony. The two bills are informed by the Commission's guidance, most directly, the *Sea Level Rise Guidance* and *Shoreline Setback Guidance*.

D. University of Hawaii School of Ocean & Earth Science & Technology (UH SOEST) Outreach

Since January 2020, UH SOEST staff have given presentations focused on sea level rise and coastal erosion to the following associations and community groups:

- KSBE Real Estate Division
- Maui County Council
- Brookfield Properties
- Surfrider Hawaii Chapter

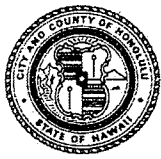
- Belt-Collins
- Kauai Board Realtors
- Kobayashi Group LLC
- Urban Land Institute
- Windward Realtors Association
- Outrigger Club Board
- Honolulu Board of Realtors
- Kauai Realtors Association
- Iolani Alumni Association
- Maui County Council

UH SOEST staff have also discussed the need for updated legislation with several City Councilmembers.

E. *Hawaii Sea Grant Outreach*

Since mid-2016 the Hawaii Sea Grant program has conducted approximately 50 presentations, workshops, and interactive demonstrations attended by Honolulu government officials and/or Oahu community members related to the State's *Hawaii Sea Level Rise Vulnerability and Adaptation Report*, *Hawaii Sea Level Rise Viewer*, and/or related coastal hazards and sea level rise vulnerability assessment and planning efforts, including two rounds of Oahu and statewide public and agency outreach in 2017 and 2018 on behalf of the DLNR and State Climate Commission.

**Proposed Chapter 23, ROH
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 23, 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 23, Article 1, Revised Ordinances Honolulu 1990 ("Shoreline Setbacks"), as amended by Ordinance 20-18, is amended to read as follows:

"Article 1. Shoreline Setbacks

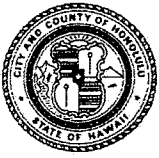
Sec. 23-1.1 Authority.

Pursuant to the authority conferred by HRS Chapter 205A, the standards and procedures in this chapter are hereby established and shall apply to all lands within the shoreline area of the [city] City and County of Honolulu (City).

Sec. 23-1.2 Purpose and Intent.

(a) It is a primary policy of the [city] 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[; 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



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- (5) Prohibit shoreline hardening unless necessary for coastal restoration or where it would result in a clear public benefit.
- (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 ~~[land utilization]~~ planning and permitting to adopt rules pursuant to HRS Chapter 91, which generally prohibit within the coastal erosion hazard zone 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 ~~[land utilization]~~ 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.

Sec. 23-1.3 Definitions.

For the purposes of this chapter, ~~[unless it is plainly evident from the context that a different meaning is intended,]~~ the following words and phrases are defined as follows:

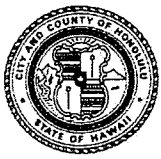
"Activity" means any action relating to construction, reconstruction repair, improvement, grubbing, [or] grading, or stockpiling [of earth materials].

"Annual coastal erosion rate" means 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, or its successor.

"Applicant" means any individual, organization, partnership, firm, association, trust, estate, or corporation, and any agency of the federal, the State, or ~~[any]~~ county government.

"Beach" means 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" mean natural sand movement from wave, current, or wind action, including erosion or accretion of sand.



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"Buildable area" means that portion of a zoning lot excluding the shoreline setback, required yards, street setbacks, stream or wetland setbacks, easements, and flag lot stems.

~~["Certified shoreline" or "certified shoreline survey" means 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" means a seaward trend in shoreline movement.

"Coastal dune" means 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" means a landward trend in shoreline movement.

"Coastal hazards" means natural processes that place people, property, or the environment at risk for injury or damage, including but not limited to tsunamis, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.

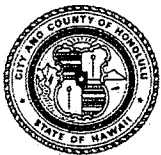
"Council" means the city council of the City and County of Honolulu.

"Department" means the department of ~~[land utilization]~~ planning and permitting, which agency shall act as the ~~["county planning department"]~~ county planning department under applicable HRS [Section 205A-41] sections.

"Director" means the director of the department of ~~[land utilization]~~ planning and permitting.

"Dwelling unit" means a room or rooms connected together, constituting an independent housekeeping unit for a household and containing a single kitchen, and includes farm dwellings, ohana dwelling units, accessory dwelling units, and caretaker's accessory dwellings as defined in ROH Chapter 21.

"Earth material" means any sand, coral or coral rubble, rocks, soil, fill, or marine deposits.



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"Excavation" or "cut" means any act by which earth material is cut into, dug, or moved, and any condition resulting therefrom.

"Fill" means any act by which earth material is placed or deposited by artificial means, and any condition resulting therefrom.

"Grading" means any excavation or fill, or any combination thereof.

"Grubbing" means any act by which vegetation, including trees, shrubs, or other ~~[plants,]~~ flora is dislodged or uprooted from the surface of the ground.

"Hawaii Shoreline Study" means the coastal erosion data developed by the Coastal Geology Group in the School of Ocean and Earth Science and Technology at the University of Hawaii.

"Landscaping" means 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.

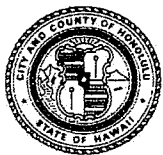
"Mauka" means landward or in a landward direction from the sea.

"Minor shoreline structure" means a structure authorized to be located in the shoreline setback 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 of the shoreline or sand dunes, alter the grade of the shoreline setback area, or endanger public health, safety, or welfare.

"Nonconforming structure" means a structure or portion of a structure ~~[which]~~ that was previously lawful but ~~[which]~~ is currently located within the shoreline setback as a result of subsequent beach erosion, or as a result of changes in the law relating to the shoreline setback.

"Person" means 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" means 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 area.



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"Public interest" means 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" means 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" means renovating or fixing ordinary damage to a structure if a licensed professional engineer or architect values the cost of the repair at less than 50 percent of the current replacement cost of the structure. 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 the 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.

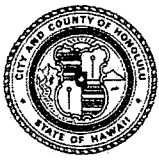
"Sea level rise exposure area" means the mapped zone on the Hawaii Sea Level Rise Viewer, or its successor, representing the aggregate of the following coastal hazard layers: passive flooding (still water high tide flooding), annual high wave flooding (overwash during the largest wave events of the year), and coastal erosion.

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

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

"Shoreline hardening" means 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" means a zoning lot of record, any portion of which lies within the shoreline 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



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zoning lot may be determined to be a shoreline lot notwithstanding the existence of a second zoning lot or parcel between the first zoning lot and the shoreline.

"Shoreline setback line" means 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" means a survey map [~~performed~~] 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 Section 205A-42, or its successor, and the rules adopted pursuant thereto.

~~["Shore protection structure" means a structure which may artificially fix the location of the shoreline, including but not limited to a groin, seawall, or revetment.]~~

"Stockpiling" means the temporary open storage of materials, including earth materials.

"Structure" means 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.

Sec. 23-1.4 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 January 1, 2023, after which the shoreline setback line will be established at:
- (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.
 - (2) Sixty feet on zoning lots within the Primary Urban Center Development Plan area.



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- (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 shows coastal accretion, or where the historical erosion data shows an 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 approval by the director; provided that [the];
- (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 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, parking, 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 lots that exceed 60 feet in width, the side yards may be increased so that the buildable area depth is 30 feet;
- (6) The proposal does not involve new shoreline hardening;
- (7) If a proposed structure is within a special flood hazard area, as defined in ROH Chapter 21A, structural design and construction must be resilient to existing and increasing flood hazards with a finished lowest floor elevation a minimum of three feet above the flood insurance rate map base flood elevation;
- (8) If a proposed structure is outside of the special flood hazard area but within the sea level rise exposure area, the lowest floor of the structure must be a minimum of three feet above the highest adjacent grade; and
- (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



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shoreline setback line ~~[can be]~~ is 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 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.]~~

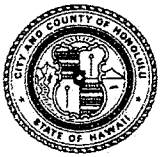
~~Where the shore protection structure was constructed without a shoreline survey first being made and certified by the state department of land and natural resources, the director shall determine the prior location of the shoreline solely for the purpose of establishing the shoreline setback line. In 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 land utilization following construction of the shore protection structure.]~~

- (d) A shoreline setback determination approved by the director for 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 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 of Hawaii.

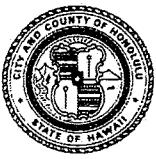
Sec. 23-1.5 Prohibitions within the shoreline area.

- (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 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;



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- (2) Where the mining or taking is authorized by a variance granted pursuant to this chapter;
 - (3) The clearing of materials from existing drainage pipes, canals, and the mouths of streams, including clearing for purposes allowed under HRS Section 46-11.5; provided that sand removed ~~[shall]~~ must be placed on adjacent areas unless the placement would result in significant turbidity~~;~~, or unsanitary or undesirable conditions; or
 - (4) The clearing of the shoreline area for ~~[state]~~ State or ~~[city]~~ City maintenance purposes~~;~~, 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 area on June 16, 1989~~;~~, including the restoration of traditional Hawaiian fishpond systems 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



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boating, maritime, aviation, public infrastructure, recreation-related, or 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, ocean sports recreational facilities, which result in little or no interference with natural shoreline processes]~~ lawfully established structures included in subdivision (3). 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;

~~[(5)]~~(6) Construction, installation, maintenance, repair, and replacement of public warning or signal devices and sirens~~[-]; or~~

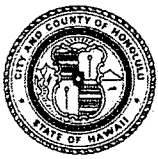
(7) Beach and sand dune restoration and maintenance activities permitted by the State department of land and natural resources.

Sec. 23-1.6 Nonconforming structures.

- (a) ~~[Any]~~ A nonconforming structure may be repaired or altered ~~[in any manner which does]~~ provided the repairs do not increase [its] or intensify the nonconformity, and the cumulative valuation of the repairs do not exceed 50 percent of the replacement cost of the structure over a 10-year period.
- (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 the shoreline setback rules and regulations, ~~[or successor regulations]~~ as may be amended or superseded.
- (c) Reconstruction of ~~[such]~~ a nonconforming structure within the shoreline setback ~~[shall require a]~~ requires a shoreline setback variance.

Sec. 23-1.7 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 lots may be approved unless each new lot:



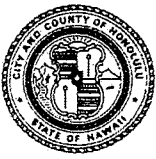
A BILL FOR AN ORDINANCE

- (1) Can accommodate a ~~[60-foot]~~ 130-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; or~~
- (B) ~~Minor~~ ; 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 lot lines[, and which] that will not result in any increase in the number of permitted dwelling units, nonresidential structures, or 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.

Accreted lands obtained from the State ~~[of Hawaii]~~ pursuant to HRS Section 501-33 ~~[shall]~~ may not be included as part of the land area when ~~[making calculations of]~~ calculating the 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 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 130-foot shoreline setback 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) Does not create flag lots.



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Sec. 23-1.8 Criteria for granting a shoreline setback variance.

- (a) The director, as provided in Section 23-1.10, 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;
 - (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.
- (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 shall mean principally of benefit to the general public, as determined by the director.~~]



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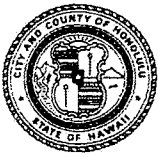
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(3) Hardship Standard.

- (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 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].~~
- (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.



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(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] 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 should properly consider factors such as shoreline conditions, erosion, surf and flood conditions, and the geography of the lot.

~~[(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.

Sec. 23-1.9 Conditions on shoreline setback variances.

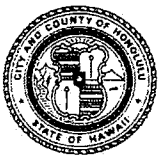
(a) No shoreline setback variance [shall] may be granted unless appropriate conditions are imposed:

~~[(a)]~~(1) To maintain safe access to and along the shoreline or adequately compensate for its loss;

~~[(b)]~~(2) To minimize risk of adverse impacts to coastal, beach, and marine processes;

~~[(c)]~~(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

~~[(d)]~~(4) To minimize adverse impacts on public views to, from, and along the shoreline.



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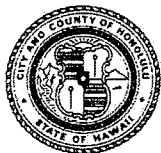
- (b) Structures, activities, and uses approved by a shoreline setback variance within the shoreline setback area are not eligible for subsequent protection by shoreline hardening, and hardship may not be determined as a result of a former shoreline setback variance approval.
- (c) The City is not responsible 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.

Sec. 23-1.10 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.
- (b) The [~~director~~] applicant shall give reasonable notice of an application for a shoreline setback variance under this chapter to abutting property owners, [~~to~~] affected neighborhood boards and community associations, and [~~to~~] persons [~~who~~] that have requested receipt of a notice.

Sec. 23-1.11 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 of this code; or~~



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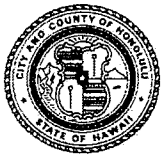
- (5) ~~Maintenance, repair, reconstruction and minor additions to or alterations of legal boating, maritime or water sports recreational facilities, which result in little or no interference with natural shoreline processes]~~ application.
- (b) The director shall give reasonable notice of the public 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 the public [hearing, and] hearing. The applicant shall 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.

Sec. 23-1.12 ~~[Variance application fee.]~~ Application review and processing fees.

- (a) ~~[The application fee for a variance under this chapter will be \$2,400.00, 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>\$400.00</u>	<u>\$2,000</u>	<u>\$2,400.00</u>
<u>Environmental Assessment</u>	<u>\$200.00</u>	<u>\$1,000</u>	<u>\$1,200.00</u>
<u>Environmental Impact Statement</u>	<u>\$400.00</u>	<u>\$2,000</u>	<u>\$2,400.00</u>
<u>Minor Shoreline Structure Permit</u>	<u>\$100.00</u>	<u>\$500</u>	<u>\$600.00</u>
<u>Shoreline Setback Determination</u>	<u>\$0.00</u>	<u>\$600 per tax map key</u>	<u>\$600 per tax map key</u>
<u>Confirmation of Shoreline Structure Nonconforming Status</u>	<u>\$0.00</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 subsequent to 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~~



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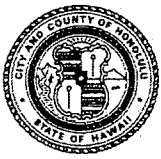
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- ~~minor shoreline structure permit, the application or processing fee will be doubled] an application is submitted, it must include all required fees. The nonrefundable application review fee will immediately be applied to the review of the application. 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 \$600.00 per tax-map key.~~
- ~~(d) When a minor shoreline structure permit application is submitted for processing, the application fee will be \$600.00.~~
- ~~(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 \$1,200.00 for an environmental assessment, and \$2,400.00 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 \$2,400.00 or more will have an application review fee of \$400.00;~~
 - ~~(2) Applications with a fee of \$1,200.00 will have an application review fee of \$200.00; and~~
 - ~~(3) Minor shoreline structure permits will have an application review fee of \$100.00.~~

~~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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- (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) Fees may be waived for City projects.

Sec. 23-1.13 Civil fines.

- (a) Any person ~~[who]~~ that violates any provision of this chapter, any rule adopted pursuant thereto, any permit issued pursuant thereto, or any condition of a shoreline setback variance shall, upon notice issued pursuant to Section 23-1.14, be deemed to have committed a civil violation and shall be subject to an initial civil fine not to exceed ~~[\$10,000.00]~~ \$100,000 per violation and a maximum daily fine of ~~[\$1,000.00]~~ \$10,000 until the violation is corrected or a variance is granted.
- (b) ~~[A] Any order to pay civil fines may not be stayed by the submittal of a shoreline setback variance application [submitted subsequent to an applicant's] after the applicant initiated, [having] completed, [the activity structure, or having been] or was cited for the activity [or the construction without having obtained a variance, shall not stay any order to pay civil fines].~~

Sec. 23-1.14 Enforcement.

- (a) Issuance of Notice of Violation and Order. If the director determines that any person is violating any provision of 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;



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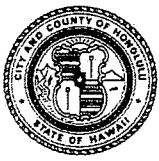
- (D) The nature of the violation; and
 - (E) The location and the date and time that the violation was discovered.
- (2) Contents of the Order. The order may require the person to do any or all of the following:
- (A) Cease and desist from the violation;
 - (B) Correct the violation at the person's own expense, which may include removal of any structure and restoration of land to previous conditions;
 - (C) Pay a civil fine not to exceed ~~[\$10,000.00]~~ \$100,000 in the manner, at the place, and before the date specified in the order;
 - (D) Pay a civil fine not to exceed ~~[\$1,000.00]~~ \$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 said 30 days]~~ prior to expiration of the 30-day period.

- (b) Effect of Order—Right to Hearing. The provisions of 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



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~~[shall]~~ will be conducted by the director or the director's designee in accordance with the provisions of HRS Chapter 91. Following ~~[said]~~ 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.

- (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 any provision 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 the provisions 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 be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

Sec. 23-1.15 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:

- ~~[(a)]~~ (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



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of this chapter, the structure ~~[shall]~~ will be construed ~~[to be]~~ as being located entirely within the shoreline area; and

~~[(b)](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, however, that such permits may be granted where the director determines it necessary to protect public health and safety].~~

Sec. 23-1.16 Rules.

The department shall adopt rules pursuant to HRS Chapter 91 to implement this chapter and HRS Chapter 205A, Part III. The rules may ~~[designate high-quality]~~ identify high-quality sandy beaches ~~[which]~~ that should be preserved, and 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."



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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.

SECTION 4. This ordinance takes effect upon January 1, 2024.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

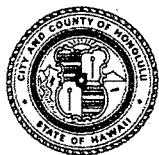
APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

RICK BLANGIARDI, Mayor
City and County of Honolulu

**Proposed Chapter 25, ROH
Special Management Area**



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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 ROH Chapter 25, 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 1990, as amended by Ordinances 20-18 and 21-27, is amended to read as follows:

"Chapter 25 SPECIAL MANAGEMENT AREA

Article 1. General Provisions

Sec. 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.

Sec. 25-1.2 Purpose and Intent.

It is the ~~[City and County of Honolulu's]~~ policy of the City and County of Honolulu (City) 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 and county]~~ 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; ~~[to]~~ and allow wetland losses only ~~[where]~~ when all practicable measures have been applied to reduce those losses that are unavoidable and in the public interest.

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



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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, development plans, and sustainable communities plans.

Sec. 25-1.3 Definitions.

~~[Whenever the following words are used in this chapter, they shall have the meaning ascribed to them in this section. These]~~ The following definitions are intended to clarify but not replace or negate the definitions used in HRS Chapter 205A. For the purposes of this chapter, the following words and phrases are defined as follows:

"Agency" means the department of planning and permitting ~~[(DPP), City and County of Honolulu].~~

"Applicant" includes any individual, organization, partnership, firm, association, trust, estate, or corporation ~~[including any utility]~~, and any agency of the federal, the [state and] State, or county government.

"Artificial light" or "artificial lighting" means the light emanating from any fixed human-made device.

"Beach" means 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" means 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.

~~["City and county" means the City and County of Honolulu.]~~

"Coastal hazards" means 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" means the ~~[city]~~ City council of the City and County of Honolulu, which body shall act as the "authority" under HRS Chapter 205A.



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"Crops" means agricultural produce or ~~[part(s)]~~ parts of plants or trees cultivated for commercial or personal use.

"Cumulative impact" means 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" means 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 those uses, activities, or operations excluded in paragraph (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; and]~~ to water;
- (E) Construction, reconstruction, ~~[demolition]~~ or alteration of the size of any structure~~[-];~~ or
- (F) Construction or reconstruction of a dwelling unit 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;
- (G) Construction or reconstruction of a dwelling unit 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.
- (H) Construction or reconstruction of a dwelling unit that is part of a larger development of three or more dwelling units.



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(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" shall mean floor area as defined under Section 21-40.4;]~~ of three or more dwelling units;
- (B) Structural and nonstructural improvements to existing dwelling units, including the addition of minor accessory structures and floor area additions, provided such additions are limited to 300 square feet if the dwelling unit is considered development under subdivisions (1)(F), (1)(G), or (1)(H);
- (C) Repair or maintenance of roads and highways within existing rights-of-way;
- ~~[(G)]~~(D) Routine maintenance dredging of existing streams, channels ~~[and]~~, or drainage ways;
- ~~[(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 height, density, parking ~~[and]~~, or shoreline setback;
- ~~[(F)]~~(G) Repair, maintenance, or interior alterations to existing structures;
- ~~[(G)]~~(H) Demolition or removal of structures, except ~~[these]~~ for structures located on any historic site as designated in national or ~~[state]~~ 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



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accordance with [paragraph] subdivision (3). The uses excluded under this paragraph do not include uses associated with agricultural activity dedicated to manufacturing, processing, or packaging;

~~[(H)]~~(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 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 or noncommercial structures; [and] or

~~[(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 paragraph (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 environmental or ecological effect on the special management area, that use, activity, or



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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 paragraph (2)]~~ that is not otherwise considered development may have a significant 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" means to illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.

"Director" means the director of the department of planning and permitting~~[, City and County of Honolulu, or authorized subordinate].~~

"Dwelling unit" means a room or rooms connected together, constituting an independent housekeeping unit for a household and containing a single kitchen, and includes farm dwellings, ohana dwelling units, accessory dwelling units, and caretaker's accessory dwellings as defined in ROH Chapter 21.

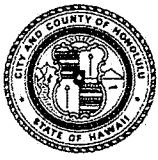
"Effects" or "impacts" mean changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternative, including those effects that occur at the same time and place as the proposed action or alternative and may include effects that are later in time or farther removed in distance from the proposed action or alternative.

["EIS"] "Environmental disclosure document" means an ~~[informational document]~~ an environmental assessment or an environmental impact statement prepared in compliance with ~~[the environmental quality commission's rules and regulations implementing]~~ HRS Chapter 343.

"Emergency permit" means a ~~special management area~~ emergency permit as defined in HRS Section 205A-22.

"Finding of no significant impact" means 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" means 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



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roof overhang or eaves, and the roof or floor above which are supported by posts, columns, partial walls, or similar structural members.

~~["Historic wetlands" are wetlands which have been in existence for 50 years or longer.~~

~~"Minor permit" means special management area minor permit as defined in HRS Section 205A-22.~~

~~"Natural wetlands" are those wetlands not created by a human activity.]~~

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

"Mauka" means landward or in a landward direction from the sea.

"Person" means any individual, organization, partnership, firm, association, trust, estate, public or private corporation, the [state] State or any of its political subdivisions, or any other legal entity.

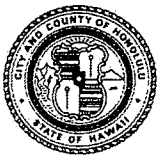
"Restoration" means a human activity that returns a natural area, including a wetland or former wetland, from a disturbed or altered condition with lesser acreage or functions to an improved condition.

"Sea level rise exposure area" means 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" means 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" means a ~~[shoreline lot as defined in ROH Chapter 23.]~~ zoning lot of record, any portion of which lies within the shoreline 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" shall also mean special management area use permit.]~~



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"Shoreline survey" means 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 Section 205A-42, or its successor, and the rules adopted pursuant thereto.

"Significant effect" means 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.

"Special management area" or "SMA" means the land extending ~~[inland]~~ mauka from the certified shoreline, as established in this chapter with the mauka boundary [and] delineated on the maps established by the council and filed with the council and agency pursuant to HRS Section 205A-23.

~~["Special management area minor permit" means an action by the agency authorizing development, the valuation of which is not in excess of \$500,000.00 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.~~

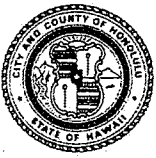
~~"Special management area use permit" means an action by the authority authorizing development, the valuation of which exceeds \$500,000.00 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.]~~

"Special wetland area" means 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]~~ means 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.



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"Valuation" ~~[shall be determined by the agency and]~~ means the estimated ~~[cost to replace the structure in kind,]~~ fair market value of the proposed development based on current [replacement costs, or in the case 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" means an area possessing three essential characteristics:

- (1) Hydrophytic vegetation;
- (2) Hydric soils; and
- (3) Wetland hydrology,

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

Sec. 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 hereby]~~ were adopted and made a part of this chapter and filed with the council ~~[on the effective date of this chapter,]~~, shall be the ~~[city and county's]~~ City's official special management area to be administered and enforced by the director under the provisions of this chapter.
- (b) This chapter shall apply 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.

Sec. 25-2.2 Included area.

The special management area shall include those areas of the island of Oahu so designated from the mauka boundary on the maps to the shoreline; and the islands within three 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,



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French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, and Kure Atoll.

[Sec. 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~~
 - ~~(C) Wetland hydrology; and~~
 - ~~(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 the department of land and natural resources, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and/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.]~~

Sec. 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.



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- (b) A proposal is exempt from obtaining a permit if the director finds that the proposal is not defined as development under Section 25-1.3.
- (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 use ("major") permit approved by resolution of the council is required for any development proposal that:
 - (1) Has a valuation or fair market value of \$500,000 or more; or
 - (2) May have significant adverse environmental or ecological effect, taking into account potential cumulative impacts and significant effects.

Article 3. Objectives and Policies[~~Review and Procedural Guidelines~~]

Sec. 25-3.1 Objectives, [and] policies, and guidelines.

The objectives [and] policies, and guidelines of this chapter shall be those contained in HRS Sections 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 reserved.
- (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 where 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



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- 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.
 - (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 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



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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.
- (k) Consistency with plans and regulations. Development within the SMA must be consistent with the general plan, development plans, sustainable communities plans, and zoning designations; provided that a finding of inconsistency does not preclude concurrent processing of amendments to applicable plans or a zone change.

[Sec. 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.~~

- ~~(a) All development in the special management area shall be subject to reasonable terms and conditions set by the council to ensure that:~~
 - ~~(1) 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;~~
 - ~~(2) Adequate and properly located public recreation areas and wildlife preserves are reserved;~~
 - ~~(3) Provisions are made for solid and liquid waste treatment, disposition and management which will minimize adverse effects upon special management area resources; and~~
 - ~~(4) 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

Sec. 25-4.1 Permit review guidelines.

~~[(b)](a)~~ No development ~~[shall]~~ may be approved unless the agency or the council has



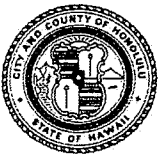
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first found that:-

- (1) ~~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 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.
- ~~[(2) The development is consistent with the objectives and policies set forth in Section 25-3.1 and area guidelines contained in HRS Section 205A-26;~~
- ~~(3) 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.]~~

~~[(e)]~~(b) The agency or council shall seek to minimize, ~~[where]~~ whenever reasonable:

- (1) Dredging, filling, or otherwise altering any bay, estuary, salt marsh, wetland, river mouth, slough, or lagoon, except for restoration purposes;
- (2) Any development ~~[which]~~ that would reduce the size of any beach, coastal dune, or other area usable for public recreation;
- (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;
- (4) Any development ~~[which]~~ that would substantially interfere with or detract from the line of sight toward the ~~[sea]~~ ocean from the ~~[state]~~ State highway nearest the coast; ~~[and]~~
- (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



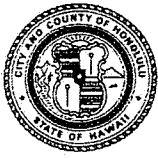
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habitats, or potential or existing agricultural uses of land[-]; and

- (6) Development that would result in the placement of habitable structures within the sea level rise exposure area.

~~[Sec. 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 Section 25-4.1.~~
- (e) ~~Determination.~~
- (1) ~~For the purposes of this chapter, other than special requirements for~~



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~~shoreline lots as provided in Section 25-6.3, the director shall declare a development proposal exempt where the director finds that the proposal is not defined as development under Section 25-1.3. No shoreline lot shall be exempt from the special requirements for shoreline lots.~~

(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 \$500,000.00; and~~
- (B) ~~Will not significantly affect the special management area and/or special wetland area.~~

~~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~~

Sec. 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 of this chapter.~~

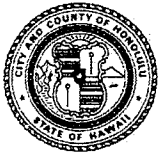
Sec. 25-4.2 ~~Procedures.~~

~~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 thereunder by the environmental quality commission. In the event that 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

Sec. 25-5.1 [Required Materials] Consultation

Any applicant contemplating development within the special management area may contact the agency for information regarding procedures and general information that may influence on 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



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whether the proposal constitutes development for purposes of this chapter and whether an SMA permit is required.

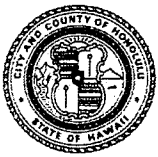
Sec. 25-5.2 Special Management Area Minor Permit

(a) When a proposed development requires a special management area minor permit, ~~[an applicant for development within the special management area will be responsible for submitting the following to the agency:]~~ the applicant shall submit a

- ~~[(1) A] completed application form (to be obtained from the agency) that is filled out in accordance with and includes the informational plans and materials listed in 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 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 application review fee, and the application processing fee [according to the schedule set forth in subsection (c)].~~

~~[(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 submitting the following to the agency:~~

- ~~(1) A completed application form (to be obtained from the agency);~~
- ~~(2) The items set forth in subsections (a)(2) through (7);~~
- ~~(3) A written description of the affected environment which addresses the~~



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development's technical and environmental characteristics;

- (4) Additional information that may be needed by the agency for determining the impacts of the proposed development on special wetland areas;
- (5)
 - (A) If the director allows concurrent processing of the assessment required by Section 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.
 - (B) If the director does not allow concurrent processing of the assessment required by Section 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 shall 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 shall be \$2,400.00, plus an additional \$600.00 per acre or major fraction thereof, up to a maximum of \$30,000.00.
 - (2) When a special management area minor permit application is submitted for processing, the application fee shall be \$1,200.00.
 - (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 shall be a processing fee of \$1,200.00 for an environmental assessment, and \$2,400.00 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 subsequent to the applicant's being cited for undertaking development without having obtained the necessary permit, the application fee set forth shall be doubled.



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- (5) ~~When an application for a minor modification to a (major) special management area use permit is submitted, there shall be a fee of \$200.00.~~
- (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:~~
- ~~(i) Applications with a fee of \$2,400.00 or more [shall] will have an application review fee of \$400.00;~~
 - ~~(ii) Applications with a fee of \$1,200.00 will have an application review fee of \$200.00; and~~
 - ~~(iii) Applications with a fee of \$200.00 will have an application review fee of \$100.00.~~

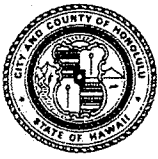
~~When an application under this section has been accepted by the department for processing, the application review fee for the submitted application shall be counted as partial payment towards the total application fee for that submittal.~~

- (d) ~~When a request for a special management area determination is submitted, a nonrefundable review fee of \$150.00 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 Section 25-3.3(c)(1), as determined by either the issuance of the finding of no significant impact or the acceptance of a final EIS. In the event that 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.~~

~~Sec. 25-5.3 Public hearings.~~



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- (a) ~~The agency, pursuant to powers of delegation given to the city 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.~~

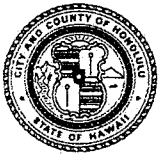
~~Sec. 25-5.4 Agency recommendation.~~

~~The agency shall transmit its findings and recommendations on the application for a special management area use permit to the city council for its consideration and decision within 20 working days of the close of the public hearing, unless the assessment required by Section 25-3.3(c)(1) has not been completed, in which case the deadline for transmitting the findings and recommendations to the city 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.~~

~~Sec. 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 prior to 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:



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- (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 Section 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.
- (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.

Sec. 25-5.3 Special Management Area Major Permit

When a proposed development requires a special management area major permit, the following procedures apply.

- (a) 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.
- (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 project. The requirements of this submission will be deemed satisfied if the applicant makes a written request to present the project to the neighborhood board or community



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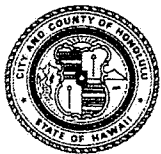
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association and:

- (1) 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 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 project 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.
- (d) The applicant shall submit all application materials required for the special management area major permit and a copy of the final environmental disclosure document.
- (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 pertinent neighborhood boards or community associations, owners of all property within 300 feet of the affected property, and owners of all property described in



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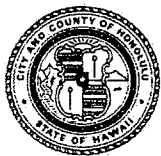
the application.

- (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.
- (j) 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.

Sec. 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</u> <u>plus an</u> <u>additional \$600</u> <u>per acre or</u> <u>major fraction</u> <u>thereof, up to a</u> <u>maximum of</u> <u>\$30,000</u>	<u>\$2,800</u> <u>plus an</u> <u>additional \$600</u> <u>per acre or</u> <u>major fraction</u> <u>thereof, up to a</u> <u>maximum of</u> <u>\$30,000</u>



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<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</u> <u>per tax map key</u>	<u>\$150</u> <u>per tax map key</u>
<u>Confirmation of Nonconformity or Site History and Status</u>	<u>none</u>	<u>\$300</u> <u>per tax map key</u>	<u>\$300</u> <u>per tax map key</u>

- (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) Fees may be waived for City projects.

Article 6. ~~[Prohibition]~~ Required Conditions.

~~[Sec. 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.~~

~~Sec. 25-6.2 Permit to precede other permits.~~

~~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,~~



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~~development plans, state land use district boundary amendments and zoning changes are not permits.~~

~~Sec. 25-6.3 Special requirements applicable to shoreline lots.]~~

Sec. 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 ~~[necessarily]~~ 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 ~~[and/or]~~ or ocean waters, 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:
 - (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
 - ~~[(2)]~~ (3) [Into] Extend into any adjoining beach access right-of-way, public or private.



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Article 7. Exemptions

Sec. 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 permit pursuant to the requirements of this chapter. Two reports on the repair project must be recorded with the agency, the first within three days after the start of the project and the second upon its completion.
- (b) In the event an impending disaster or disaster has been declared under Chapter 41, Article 11, ~~[ROH 1990, as amended,]~~ or under HRS ~~[Chapters 127- and 128,]~~ Chapter 127A, the requirements of this chapter will be waived.

Article 8. Penalties

Sec. 25-8.1 Civil fine.

Any person who violates any provision of this chapter shall, upon notice issued pursuant to Section 25-9.1, be deemed to have committed a civil violation and shall be subject to a civil fine not to exceed ~~[\$10,000.00]~~ \$100,000.

Sec. 25-8.2 Additional fines.

In addition to any other penalties, any person who ~~[performs]~~ undertakes any development in violation of this chapter shall, upon notice issued pursuant to Section 25-9.1, be deemed to have committed a civil violation and shall be subject to a civil fine not to exceed ~~[\$500.00 a]~~ \$10,000 per day for each day in which ~~[such]~~ the violation persists.

Sec. 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

Sec. 25-9.1 Notice of violation and order.

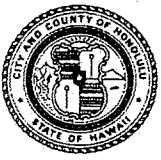
If the director determines that any person is violating any provision of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto, the director may have the person served ~~[by mail or delivery,]~~ with a notice of violation and order. A notice of violation and order must be served 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 Section 1-28.5]~~ the requirements of the agency's administrative rules, or other relevant statutory 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]~~ 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 ~~[\$10,000.00]~~ \$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 ~~[\$1,000.00]~~ \$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 Section 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]~~ 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 person or agent responsible for the original violation shall be liable to the ~~[city]~~ 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
 - (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 said 20 day]~~ prior to expiration of the 20-day period specified in Section 25-9.2(a).

Sec. 25-9.2 Effect of order—Right to hearing.

- (a) The provisions of the order issued by the director under Section 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 ~~[said 20 days]~~ the 20-day period.
- (b) Upon receipt of ~~[the]~~ a written request for a hearing, the director shall specify a



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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 ~~[said]~~ 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]~~.

Sec. 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 Sections 25-9.1 and 25-9.2. ~~[Where the]~~ If a civil action has been instituted to enforce ~~[the]~~ a civil fine imposed by ~~[said]~~ 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.

Sec. 25-9.4 Judicial enforcement of chapter.

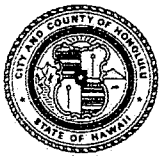
~~[The]~~ In addition to any other remedy provided for under this chapter, the director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto ~~[, in addition to any other remedy provided for under this chapter]~~.

Sec. 25-9.5 Nonexclusiveness of remedies.

The remedies provided in this chapter for enforcement of the provisions 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.

Sec. 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 Section 205A-26 and [~~ROH Section 25-3.2(b)~~] Section 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~~] State department of health, the [~~state~~] State department of labor and industrial relations, the U.S. Army Corps of Engineers, the Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard, or any other [~~state~~] 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 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 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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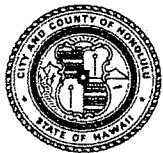
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- (A) The permit proposed to be revoked or modified [(by), identified by council resolution number and title[, if any]; the];
- (B) The date, time, place, and nature of the hearing; [the]
- (C) The reasons for the proposed revocation or modification; 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 Section 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.]~~

- (3) The agency shall give written notice[.] of revocation or modification of a special management area major permit, by publication once in a newspaper of general circulation in the [city] City and once in a newspaper of general circulation in the [state] 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.
- (4) [Notice] The agency shall give written notice of the [proposed permit]



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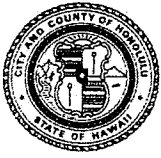
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revocation or modification of a special management area major permit containing the information set forth in subdivision (3) ~~[shall be given by the agency]~~ to any pertinent neighborhood boards or commissions, and make a good faith effort ~~[shall 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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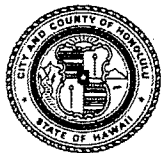
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- (C) In the case of a proposed modification, the nature of the proposed modification; and
- (D) A direction to the agency to process the proposed ~~[modification or]~~ revocation or modification in accordance with this section.
- ~~[(3)]~~(2) After adoption of the resolution, the 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 subdivision (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 revocation]~~ revocation 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 the provisions of ~~[subdivisions]~~ subsections (c)(3), (4), and (5), ~~[and (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 a written report and transcript of the public hearing to the council 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.



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- (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 be deemed not to have been revoked or modified and the resolution shall 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]~~ not 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]~~ State department of health, the ~~[state]~~ department of labor and industrial relations, 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]~~ State or federal agency having jurisdiction over the development or the type of health or safety threat posed by the development.
- ~~[(f)]~~(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, 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 and conclusions required under this subsection may be incorporated into either the final resolution or a separate document adopted by the council.
- ~~[(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



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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 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.

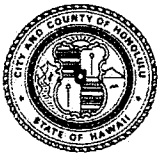
~~[(+)]~~(i) In conjunction with the written notice of agency hearing, or by written request from the council sent by registered or certified mail with postage prepaid and return receipt requested sent at least 10 days in advance of the date of ~~[the]~~ a council public hearing, the agency or the council 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.

~~[(+)]~~(j) 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.

~~[(+)]~~(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:



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(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 prior to 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.

~~[(k)]~~(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.

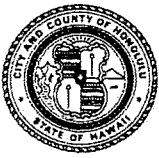
~~[(h)]~~(m) An owner of record of property shall be deemed to have been disclosed if a permit applicant, permittee, or ~~[the]~~ owner gave notice to the agency of the owner's status either at the time of the permit application or through a formal written notice to the agency of such ownership status at least one week prior to the date on which the agency is required to give notice to disclosed owners of record.

Sec. 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.

(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,



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that process may be followed for minor modifications.

Article 10. Appeals

Sec. 25-10.1 Appeal in accordance with [state] State statute.

If any person is aggrieved by [the] an order issued by the director pursuant to Sections 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

Sec. 25-11.1 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~~

~~Sec. 25-12.1 Invalid provisions.~~

~~If any provision of 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 the provisions of this chapter are severable.]"~~



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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.

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

RICK BLANGIARDI, Mayor
City and County of Honolulu