

**CHAPTER 25**  
**SPECIAL MANAGEMENT AREAS**

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## **ARTICLE 1: GENERAL PROVISIONS**

### **§ 25-1.1 Authority.**

Pursuant to authority conferred by HRS Chapter 205A, the regulations and procedures in this chapter are established and apply to all lands within the special management area of the city.

### **§ 25-1.2 Purpose and intent.**

It is the city's policy to preserve, protect, and whenever possible, restore the natural resources of the coastal zone. Special controls on development within an area in proximity to the shoreline are necessary to avoid permanent loss of valuable resources and foreclosure of management options, and to ensure that adequate public access is provided to beaches, recreation areas, and natural reserves, by dedication or other means. It is also the policy of the city to avoid or minimize damage to wetlands whenever prudent or feasible; to require that activities not dependent upon a wetland location be located at upland sites; and to allow losses of wetlands only 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 required prior to obtaining any other permits or approvals other than State land use district boundary amendments, zone changes, and amendments to the general plan and development plans, including the development plans entitled "sustainable communities

plans."

### **§ 25-1.3 Definitions.**

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning. These definitions are intended to clarify but not replace or negate the definitions used in HRS Chapter 205A.

**Agency.** The department of planning and permitting.

**Applicant.** Includes any individual, organization, partnership, firm, association, trust, estate, limited liability company, or corporation, and any agency of the federal, State, and county government.

**Artificial Light or Artificial Lighting.** The light emanating from any fixed human-made device.

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

**Coastal Dune.** One of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may provide some form of protection from wave run-up and be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

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

**Council.** The city council of the City and County of Honolulu, which body shall act as the "authority" under HRS Chapter 205A.

**Crops.** Agricultural produce or parts of plants or trees cultivated for commercial or personal use.

**Cumulative Impact.** The impact on the environment that results from the incremental impact of an action or development when added to other past, present, and reasonably foreseeable future actions or developments. Cumulative impacts can result from individually minor but collectively significant actions and development taking place over a period of time.

**Development.** Any of the uses, activities, or operations on land, or in or under water, that occur within the special management area, 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, ecology, or access to water; and
  - (E) Construction, reconstruction, or alteration of the size of any structure, including but not limited to the construction or reconstruction of a dwelling unit:
    - (i) Situated on a shoreline lot or a lot that is impacted by waves, storm surges, high tide, or shoreline erosion, including additions that exceed 300 square feet;
    - (ii) When the dwelling unit and related garages, carports, covered lanais, and accessory structures have an aggregate floor area of 7,500 square feet or more; or
    - (iii) That is part of a larger development of three or more dwelling units.
- (2) Development does not include the following:
  - (A) Construction or reconstruction of a 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 of three or more dwelling units;
  - (B) Structural and nonstructural improvements:
    - (i) To existing dwelling units, including the addition of minor accessory structures and floor area additions; provided that such additions are limited to 300 square feet if the dwelling unit is considered development under subdivision (1)(E)(i), (ii), or (iii); or

- (ii) Directly related to relocating a dwelling unit farther mauka or to an area less susceptible to coastal hazards, on the same zoning lot, and activities related to the relocation of the dwelling unit;
- (C) Repair or maintenance of roads and highways within existing rights-of-way;
- (D) Routine maintenance dredging of existing streams, channels, or drainageways;
- (E) The repair and maintenance of underground utility lines, including but not limited to water, sewer, power, or telephone lines, or minor appurtenant structures, such as pad mounted transformers and sewer pump stations;
- (F) Zoning variances, except with respect to height, density, or parking, or shoreline setback variances;
- (G) Repair, maintenance, or interior alterations to existing structures;
- (H) Demolition or removal of structures, except for structures located on any historic site as designated in national or State registers;
- (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; animal husbandry; aquaculture or mariculture of plants or animals; or other agricultural purposes, subject to review by the agency in accordance with subdivision (3); provided that this exclusion does not apply to uses associated with agricultural activity dedicated to manufacturing, processing, or packaging;
- (J) The transfer of title to land;
- (K) The creation or termination of easements, covenants, or other rights in structures or land;
- (L) The subdivision of a parcel of land into four or fewer parcels if no associated construction activities are proposed; provided that after the initial subdivision, any subsequent subdivision of the resulting parcels will be considered development for purposes of this chapter;
- (M) Installation of underground utility lines and appurtenant aboveground fixtures less than 4 feet in height along existing

corridors;

- (N) Nonstructural improvements to existing commercial structures; or
  - (O) Construction, installation, maintenance, repair, or replacement of emergency management warning or signal devices and sirens.
- (3) *Cumulative impact.* Whenever the agency finds that any use, activity, or operation that is not otherwise considered development is or may become part of a larger project, the cumulative impact of which may have a significant adverse environmental or ecological effect on the special management area, that use, activity, or operation will be defined as development for the purpose of this chapter.
- (4) *Significant effect.* Whenever the agency finds that a use, activity, or operation that is not otherwise considered development may have a significant adverse environmental or ecological effect on the special management area, that use, activity, or operation will be defined as development for the purposes of this chapter.

***Directly Illuminate.*** To illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.

***Director.*** The director of planning and permitting.

***Dwelling, Detached.*** Has the same meaning as defined in § 21-10.1.

***Dwelling Unit.*** Has the same meaning as defined in § 21-10.1. For purposes of this chapter, dwelling units include farm dwellings, ohana units, accessory dwelling units, and caretaker units.

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

***Emergency Permit.*** Special management area emergency permit as defined in HRS § 205A-22.

***Environmental Disclosure Document.*** An environmental assessment or an environmental impact statement prepared in compliance with HRS Chapter 343.

***Finding of No Significant Impact.*** A determination based on an environmental assessment that the subject action will not have a significant effect and therefore will not

require the preparation of an environmental impact statement.

**Floor Area.** The area of all floors of a structure excluding unroofed areas, measured from exterior faces of exterior walls. The floor area includes areas under the roof overhang or eaves, and the roof or floor above which are supported by posts, columns, partial walls, or similar structural members.

**Hawaii Sea Level Rise Vulnerability and Adaptation Report.** The 2017 report prepared by Tetra Tech, Inc., and the State department of land and natural resources, office of conservation and coastal lands, and adopted by the Hawaii climate change mitigation and adaptation commission.

**Hawaii Sea Level Rise Viewer.** The interactive viewer prepared by the Pacific Islands Ocean Observing System through coordination with the Hawaii sea grant program and the State department of land and natural resources to support the Hawaii Sea Level Rise Vulnerability and Adaptation Report.

**Land.** Has the same meaning as defined in HRS Chapter 205A.

**Mauka.** Landward or in a landward direction from the ocean.

**Person.** Any individual, organization, partnership, firm, association, trust, estate, public or private corporation, limited liability company, the State or any of its political subdivisions, or any other legal entity.

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

**Sea Level Rise Exposure Area.** The mapped zone on the Hawaii Sea Level Rise Viewer, or its successor, representing the aggregate of the following coastal hazard layers: passive flooding (still water high tide flooding), annual high wave flooding (overwash during the largest wave events of the year), and coastal erosion.

**Shoreline.** The upper reaches of the wash of the waves, other than storm and 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.** A zoning lot of record, any portion of which lies within the shoreline setback area, or if no certified shoreline survey exists, any portion of which lies within 130 feet inland of the natural vegetation line or debris line. A zoning lot may be determined to be a shoreline lot notwithstanding the existence of a second zoning lot between the first zoning lot and the shoreline.

**Shoreline Setback Area.** All of the land area between the shoreline and the shoreline setback line.

**Shoreline Setback Line.** The line established by Chapter 26 that runs mauka from and parallel to the certified shoreline at the horizontal plane.

**Shoreline Survey.** A survey map rendered by a registered land surveyor for the purpose of determining the location of the shoreline. A shoreline survey is considered a certified shoreline survey when the location of the regulatory shoreline has been determined by the State board of land and natural resources or the State surveyor in accordance with HRS § 205A-42 and the rules adopted pursuant thereto.

**Significant Effect.** The sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State.

**Special Management Area or SMA.** The land extending mauka from the certified shoreline, as established in this chapter, with the mauka boundary delineated on the maps established by the council and filed with the council and agency pursuant to HRS § 205A-23.

**Special Wetland Area.** That area that is a wetland and the area within 50 feet of a wetland.

**Structure.** Any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment; or anything constructed or erected with a fixed location at or under the ground, or requiring a fixed location on or under the ground, or attached to something having or requiring a fixed location on or below the ground.

**Valuation.** The estimated fair market value of the proposed development based on current costs relating to and including site preparation, materials, labor, stockpiling, grading, grubbing, and impervious surfaces.

**Wetland.** An area possessing three essential characteristics:

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

as defined in the "Corps of Engineers Wetlands Delineation Manual," January 1987, as amended. Wetlands include ponds and mudflats, which while possessing hydric soils and wetland hydrology, may not have the commonly required hydrophytic vegetation.



## **ARTICLE 2: SPECIAL MANAGEMENT AREA**

### **§ 25-2.1 Adoption.**

- (a) The special management area, as established by the council in this chapter and shown on the special management area maps, which have been adopted and made a part of this chapter and filed with the council, is the city's official special management area to be administered and enforced by the director under this chapter.
- (b) This chapter applies to all development that would affect wetlands within the special management area, regardless of the size of the wetland.

### **§ 25-2.2 Included area.**

The special management area includes those areas of the island of Oahu so designated from the mauka boundary on the maps to the shoreline; and the islands within 3 miles offshore of Oahu, including but not limited to those islands shown on the maps; and the northwestern Hawaiian Islands, which include Nihoa, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, and Kure Atoll.

### **§ 25-2.3 Permits required for development.**

- (a) All development within the special management area is subject to review under the provisions of this chapter, pursuant to the objectives, policies, and guidelines set forth in this chapter.
- (b) A proposal is exempt from obtaining a permit if the director finds that the proposal is not development governed by this chapter.
- (c) A special management area minor permit may be granted if the director finds that the development proposal:
  - (1) Has a valuation or fair market value not in excess of \$500,000; and
  - (2) Will not have significant adverse environmental or ecological effect, taking into account potential cumulative impacts and significant effects.
- (d) A special management area major permit, approved by resolution of the council, is required for any development proposal that:
  - (1) Has a valuation or fair market value that exceeds \$500,000; or
  - (2) May have significant adverse environmental or ecological effects, taking into account potential cumulative impacts and significant effects.

## ARTICLE 3: OBJECTIVES, POLICIES, AND GUIDELINES

### § 25-3.1 Objectives, policies, and guidelines.

The objectives, policies, and guidelines of this chapter are those contained in HRS §§ 205A-2 and 205A-26(1). The objectives, policies, and guidelines summarized below are the basis for analysis of uses, activities, or operations within the special management area.

- (a) *Recreational resources.* Development within the SMA should provide coastal recreational opportunities to the public. Adequate access, by dedication or other means, to beaches, coastal dunes, recreation areas, and natural reserves must be provided to the extent consistent with sound conservation principles. Adequate and properly located public recreation areas and wildlife preserves must be preserved.
- (b) *Historic and cultural resources.* Development within the SMA should protect, preserve, and restore natural or human-made historical and cultural resources.
- (c) *Scenic and open space resources.* Development within the SMA should protect, preserve, and whenever desirable, restore or improve the quality of coastal scenic and open space resources. Alterations to existing land forms and vegetation, other than for the cultivation of coastal dependent crops, must be limited so they result in minimum adverse impacts on water resources, beaches, coastal dunes, and scenic or recreational amenities. Development that is not dependent on the coast is encouraged to locate mauka of the SMA.
- (d) *Coastal ecosystems.* Development within the SMA should protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes from disruption, and minimize adverse impacts on all coastal ecosystems. Solid and liquid waste treatment and disposition must be managed to minimize adverse impacts on SMA resources.
- (e) *Economic uses.* Development within the SMA should consist of facilities and improvements important to the State's economy, and ensure that coastal-dependent development and coastal-related development are located, designed, and constructed to minimize exposure to coastal hazards and adverse social, visual, and environmental impacts within the SMA.
- (f) *Coastal hazards.* Development within the SMA should reduce impacts of coastal hazards on life and property, and must be designed to minimize impacts from landslides, erosion, sea level rise, siltation, or failure in the event of earthquake.
- (g) *Managing development and public participation.* The development review process should stimulate public awareness, education, and participation in coastal management.

- (h) *Beach and coastal dune protection.* Development within the SMA should facilitate beach management and protection by safeguarding beaches and coastal dunes for public use and recreation, the benefit of ecosystems, and use as natural buffers against coastal hazards. New structures should be located mauka of the shoreline setback line to conserve open space, minimize interference with natural shoreline processes, and minimize the loss of improvements due to erosion.
- (i) *Marine and coastal resources.* Development within the SMA should promote the protection, use, and development of marine and coastal resources to ensure that these resources are ecologically and environmentally sound and economically beneficial. Impacts on water resources, beaches, coastal dunes, and scenic or recreational amenities resulting from the construction of structures must be minimized. Development within wetland areas should be limited to activities that are dependent on or enhance wetlands, or are otherwise approved by appropriate State and federal agencies. Examples include traditional Hawaiian agricultural uses such as wetland taro production, aquaculture, and fishpond management, as well as activities that clean and restore traditional wetland areas or create new wetlands in appropriate areas.
- (j) *Cumulative impact or significant effect and compelling public interest.* Development within the SMA should not have any cumulative impact or significant effect, unless minimized to the extent practicable and clearly outweighed by public health, safety, or other compelling public interest
- (k) *Consistency with plans and regulations.* Development within the SMA must be consistent with the general plan, development plans, sustainable communities plans, and zoning ordinances; provided that a finding of inconsistency does not preclude concurrent processing of amendments to applicable plans or a zone change.

#### **ARTICLE 4: PERMIT REVIEW GUIDELINES**

##### **§ 25-4.1 Permit review guidelines.**

- (a) No development may be approved unless the agency or the council has first found that the development is consistent with the objectives, policies, and guidelines set forth in this chapter and will not have any significant adverse environmental or ecological effect, except 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. Adverse effects include, but are not limited to the potential cumulative impact of individual developments, each of which taken by itself may not have a significant adverse effect. Adverse effects may also involve development that would eliminate future planning options.

- (b) The agency or council shall seek to minimize, 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 that would reduce the size of any beach, coastal dune, or other area usable for public recreation;
  - (3) Any development that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, coastal dunes, portions of rivers and streams, and the mean high tide line where there is no beach;
  - (4) Any development that would substantially interfere with or detract from the line of sight toward the ocean from the State highway nearest the coast;
  - (5) Any development that would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, coastal ecosystems, wildlife habitats, or potential or existing agricultural uses of land; and
  - (6) Risk to development from sea level rise and other coastal hazards, which may be accomplished by siting habitable structures outside of the sea level rise exposure area if feasible, or if not feasible adapting habitable structures within the sea level rise exposure area to accommodate sea level rise.

## **ARTICLE 5: PERMIT PROCESSING PROCEDURES**

### **§ 25-5.1 Information—Preliminary determination.**

Any applicant contemplating development within the special management area may contact the agency for information regarding procedures and general information that may influence the applicant's proposed development. The applicant may request a special management area determination in which the applicant provides a summary of the proposal to the agency and the agency makes a preliminary determination about whether the proposal constitutes development for purposes of this chapter and whether an SMA permit is required.

### **§ 25-5.2 Special management area minor permit.**

- (a) When a proposed development requires a special management area minor permit, the applicant for the proposed development within the special management area will be responsible for submitting the following materials to the agency:
  - (1) A completed application form (to be obtained from the agency) that is filled

out in accordance with the agency's application instructions;

- (2) A tax map key identification of the property on which the applicant proposes development;
  - (3) A plot plan of the property, drawn to scale;
  - (4) A written description of the proposed development, a statement of the objectives of the development, and an estimate of the valuation of the development;
  - (5) A shoreline survey if required by rules adopted by the director pursuant to HRS Chapter 91;
  - (6) Any other relevant plans or information pertinent to the analysis of the development required by the agency; and
  - (7) The applicable application fee as specified in § 25-5.4.
- (b) Upon receipt of an application and applicable fees, the director shall review the application for completeness. Within 10 working days after receipt of an application, the director shall provide the applicant with written notice that:
- (1) The application is deemed complete and has been accepted for processing; or
  - (2) The application is incomplete and has been rejected, with a statement of the specific requirements necessary to complete the application.
- (c) If the director determines the development satisfies the review criteria identified in § 25-4.1, the director shall grant or grant with conditions a special management area minor permit within 45 calendar days after acceptance of a completed application. The director may extend the deadline for an additional 45 calendar days should revised plans or application materials be submitted by the applicant or when additional application materials are deemed necessary during the director's analysis of the proposal. The director may grant an additional deadline extension of 30 calendar days on request of the applicant, as necessary.
- (d) If the director determines the development is likely to have significant adverse environmental or ecological effects, taking into account potential cumulative effects, the director shall deny the application and the applicant may seek a special management area major permit.

### **§ 25-5.3 Special management area major permit.**

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

- (a) Except for one-family and two-family detached dwellings on a single zoning lot, the applicant shall prepare the applicable environmental disclosure document, which will be processed in accordance with the procedures set forth in HRS Chapter 343 and the rules adopted thereunder. The department of planning and permitting will act as the accepting agency for purposes of HRS Chapter 343; provided that if another agency proposes the action and is preparing the environmental disclosure document, that agency shall act as the accepting agency. The director may allow the application for an SMA major permit application to be processed concurrently with the preparation of the applicable environmental disclosure document.
- (b) Prior to submitting an SMA major permit application to the agency, the applicant shall present the project to the neighborhood board of the district where the project is located or, if no such neighborhood board exists, an appropriate community association. The applicant shall provide written notice of the presentation to owners of all properties adjoining the proposed development. The requirements of this subsection will be deemed satisfied if the applicant makes a written request to present the proposed development to the neighborhood board or community association and:
  - (1) The neighborhood board or community association fails to provide the applicant with an opportunity to present the proposed development at a meeting held within 60 days after the date of the written request; or
  - (2) The neighborhood board or community association provides the applicant with written notice that it has no objection to the proposed development or that no presentation of the project is necessary.
- (c) Upon issuance of a finding of no significant impact or acceptance of the environmental disclosure document, and after the applicant has met the requirements of subsection (b), the applicant may submit a special management area major permit application to the agency.
- (d) The applicant shall submit to the agency:
  - (1) All application materials that would be required for the special management area minor permit as specified in § 25-5.2;
  - (2) A copy of the final environmental disclosure document; and
  - (3) The applicable application fee specified in § 25-5.4.

- (e) Upon receipt of an application, the director shall review the application for completeness. Within 10 working days after receipt of an application, the director shall provide the applicant with written notice that:
  - (1) The application is deemed complete and has been accepted for processing; or
  - (2) The application is incomplete and has been rejected, with a statement of the specific requirements necessary to complete the application.
- (f) The agency shall hold a public hearing on the application at a date set not less than 21 nor more than 60 calendar days after the date the application was accepted as complete; provided that the period may be extended if agreed to by the applicant. The public hearing may be held in the area in which the development is proposed.
- (g) Notice of the public hearing must be published in a newspaper of general circulation in the State at least 20 calendar days prior to the date of the public hearing.
- (h) The agency shall provide adequate written notice of the public hearing to:
  - (1) Pertinent neighborhood boards or community associations;
  - (2) Owners of all property within 300 feet of the affected property; and
  - (3) Owners of all property described in the application.
- (i) The agency shall transmit its findings and recommendations on the application for a special management area major permit to the council for its consideration and decision within 45 calendar days after the close of the public hearing; provided that this transmittal deadline may be extended if agreed to by the applicant.
- (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.

#### § 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.

<b>Submittal Type</b>	<b>Review Fee</b>	<b>Processing Fee</b>	<b>Total Fee</b>
Environmental Assessment	\$200	\$1,200	\$1,400
Environmental Impact Statement	\$400	\$2,400	\$2,800
Special Management Area Minor Permit	\$200	\$1,200	\$1,400
Special Management Area Major Permit	\$400	\$2,400 plus an additional \$600 per acre or major fraction thereof, up to a maximum of \$30,000	\$2,800 plus an additional \$600 per acre or major fraction thereof, up to a maximum of \$30,000
Modification of a Special Management Area Major Permit	\$100	\$200	\$300
Special Management Area Determination	none	\$150 per tax map key	\$150 per tax map key
Confirmation of Nonconformity or Site History and Status	none	\$300 per tax map key	\$300 per tax map key

- (b) When an application is submitted, it must include all required fees. The nonrefundable application review fee will immediately be applied to the review of the application. When an application has been accepted for processing, the application review fee for the application will be counted as partial payment towards the total fee. If the application is determined to be incomplete, the processing fee will be returned.
- (c) Review fees and processing fees must be doubled for permits and environmental disclosure documents submitted after a citation has been issued for the activity or construction.



- (d) Review fees and processing fees must be doubled for permits and environmental disclosure documents submitted after the proposed work is completed.
- (e) The director may waive the fees in this section for city projects.

## **ARTICLE 6: REQUIRED CONDITIONS**

### **§ 25-6.1 Conditions for all development.**

The following requirements apply to all uses, 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 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 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 must be shielded by wall directors or other acceptable shielding, and all shielding must be specified on building permit plans. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes on a shoreline lot are prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline or ocean waters, or both, except as may otherwise be permitted by HRS Section 205A-71(b).
- (b) *Landscaping.* All landscaped areas, landscaping, and irrigation on or for any shoreline lot must be contained and maintained within the property boundaries of the shoreline lot of origin, and 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) Extend seaward of the shoreline as depicted on the current certified shoreline survey for the shoreline lot, or in the event there is no current certified shoreline survey for the lot, seaward of the presumed shoreline; and
  - (3) Extend into any adjoining beach access right-of-way, public or private.

## **ARTICLE 7: EXEMPTIONS**

### **§ 25-7.1 Emergency permits.**

- (a) In cases of emergency repairs to existing public utilities, including but not limited to flood control structures, highways, and water, sewer, gas and electric transmission lines, the respective governmental agency or public utility company is exempt from obtaining a special management area use permit pursuant to the requirements of this chapter. Two reports on the repair projects must be recorded with the agency, the first within three days after the start of the project and the second upon the project's completion.
- (b) In the event an impending disaster or disaster has been declared under Chapter 2, Article 25A or under HRS Chapter 127A, the requirements of this chapter will be waived.

## **ARTICLE 8: PENALTIES**

### **§ 25-8.1 Civil fine.**

Any person who violates this chapter will, upon notice issued pursuant to § 25-9.1, be deemed to have committed a civil violation and will be subject to a civil fine not to exceed \$100,000.

### **§ 25-8.2 Additional fines.**

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

### **§ 25-8.3 Additional penalties for special wetland areas.**

In the event of a violation of the wetlands rules adopted pursuant to Article 11, the director may, after consultation with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, order wetland restoration, creation, or other appropriate mitigating measures be undertaken by the applicant to address and correct, to the extent possible, the damaged or destroyed wetland areas.

## **ARTICLE 9: ENFORCEMENT**

### **§ 25-9.1 Notice of violation and order.**

If the director determines that any person is violating this chapter, any rule adopted thereunder, or any permit issued pursuant thereto, the director may have the person served with a notice of violation and order. A notice of violation and order must be served upon responsible persons; provided that if the whereabouts of such persons

are unknown and the director is not able to ascertain the whereabouts of such persons after exercising reasonable diligence, the director shall provide an affidavit to that effect. The notice of violation and order must be served pursuant to the requirements of the agency's administrative rules, or other relevant legal authority.

(a) *Contents of the notice of violation.* At a minimum, the notice must include the following information:

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

(b) *Contents of the order.*

- (1) The order may require the person do any or all of the following:
  - (A) Cease and desist from the violation;
  - (B) Correct the violation at the person's own expense before a date specified in the order;
  - (C) Pay a civil fine per recurring incident not to exceed \$100,000 each, in the manner, at the place, and before the date specified in the order;
  - (D) Pay a civil fine not to exceed \$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 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 may pursue the remedies specified in § 25-8.3. If the responsible party does not complete the measures specified in the order within the time frame set forth in the order, the city may restore the affected wetland to its prior condition, and create or restore other wetlands for the purpose of offsetting losses sustained as a result of the violation. The order may require that the person or agent responsible for the original violation be liable to the city for the cost of such actions;

- (F) To guide restoration and creation actions, the agency may order the violator to develop a plan as described in the rules adopted pursuant to Article 11 for approval 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 must advise the person of the finality of the order 20 days after the date of its service, unless a written request for a hearing is mailed or delivered to the director prior to expiration of the 20-day period specified in § 25-9.2(a).

#### **§ 25-9.2 Effect of order—Right to hearing.**

- (a) The provisions of the order issued by the director under § 25-9.1 will become final 20 days after the date the 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 will be considered timely if the written request is delivered or mailed and postmark dated to the director within the 20-day period.
- (b) Upon receipt of a written request for a hearing, the director shall specify a time and place for the person subject to the order to appear and be heard. The hearing will be conducted by the director in accordance with the provisions of HRS Chapter 91. Following the hearing, the director, at the director's discretion, may affirm, modify, or rescind the order.

#### **§ 25-9.3 Judicial enforcement of order.**

The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to §§ 25-9.1 and 25-9.2. If a civil action has been instituted to enforce a civil fine imposed by the order, the director need only show that a notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such a request, a civil fine was imposed, and the fine imposed has not been paid.

#### **§ 25-9.4 Judicial enforcement of chapter.**

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.

#### **§ 25-9.5 Nonexclusiveness of remedies.**

The remedies provided in this chapter for enforcement of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto are in addition to any other

remedy as may be provided by law.

**§ 25-9.6 Involuntary revocation or modification of permits.**

- (a) A special management area 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;
  - (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 relating to the permit application;
  - (5) A material mistake of fact was made by the council in the issuance of the permit so that the findings required to be made by the council as a prerequisite to the issuance of a permit under HRS § 205A-26 and § 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 significant threat to public health or safety, as determined by the State department of health, the State department of labor and industrial relations, the U.S. Army Corps of Engineers, the U.S. Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard, or any other State or federal agency having jurisdiction over the development or with respect to the type of health or safety threat posed by the development.
- (b) The revocation or modification of a special management area minor permit will be processed in accordance with rules adopted by the agency.
- (c) The agency may initiate the revocation or modification of a special management area major permit without the consent of the permittee as follows.
  - (1) Upon determining that adequate reasons may exist under subsection (a) for the revocation or modification of a special management area major permit, the agency shall hold a public hearing on the proposed revocation or modification on a date set not less than 21 nor more than 60 days after

the date on which the notice of revocation or modification is mailed to the permittee pursuant to subdivision (2).

- (2) The agency shall give written notice of revocation or modification of a special management area major permit to the permittee and any disclosed owner of record of the property that is subject to the permit. The notice must include the following information:
  - (A) The permit proposed to be revoked or modified, identified by council resolution number and title;
  - (B) The date, time, place, and nature of the hearing;
  - (C) The reasons for the proposed revocation or modification; and
  - (D) In the case of a proposed modification, the nature of the modification proposed.
- (3) The agency shall give written notice of the proposed revocation or modification of a special management area major permit, by publication once in a newspaper of general circulation in the city and once in a newspaper of general circulation in the State, not less than 21 nor more than 60 days prior to the date of the public hearing. The notice 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;
  - (B) The permit proposed to be revoked or modified, identified by council resolution number and title;
  - (C) The date, time, place, and nature of the hearing;
  - (D) The reasons for the proposed revocation or modification; and
  - (E) In the case of a proposed modification, the nature of the modification proposed.
- (4) The agency shall give written notice of the proposed revocation or modification of a special management area major permit containing the information set forth in subdivision (3) to any pertinent neighborhood boards or community associations, and make a good faith effort to give notice to the owners of all property within 300 feet of the affected property; provided that if the property is subject to condominium property regime,

notice 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 for all parties to provide 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 with its findings and recommendation and, if the report recommends revocation or modification, submit the report and a draft resolution implementing the agency's recommendation to the council within 30 calendar days after the close of the public hearing. For each of the reasons for the revocation or modification included in the notice provided under subdivision (2), the report must state whether the evidence presented at the public hearing supported or did not support revocation or modification for that reason. The report 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) The council may initiate the revocation or modification of a special management area major permit without the consent of the permittee by resolution as follows:
- (1) The resolution must set forth the following:
    - (A) The permit proposed to be revoked or modified, identified by council resolution number and title;
    - (B) The reasons for the proposed revocation or modification, identifying which of the permissible reasons set forth in subsection (a) are applicable;
    - (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 revocation or modification in accordance with this section.
  - (2) After adoption of the resolution, the city clerk shall transmit the resolution to the agency for processing.
  - (3) Upon receiving the resolution, the agency shall conduct an initial investigation into the reasons set forth in the resolution for revocation or modification of the special management area 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 revocation or modification.

The written notice must meet the notice requirements of subsection (c)(2), and must include the reasons for the proposed revocation or modification set forth in the resolution, and any other reasons for revocation or modification the agency may have identified during its initial investigation or otherwise.

- (4) The agency shall hold a public hearing on the proposed revocation or modification on a date set not less than 21 nor more than 60 days following the date of sending the notice to the permittee and others pursuant to subdivision (3).
  - (5) The agency shall give written notice of the hearing and conduct the hearing in accordance with subsections (c)(3), (c)(4), and (c)(5).
  - (6) Following the public hearing, the agency shall prepare and submit to the council a written report and transcript of the public hearing within 30 calendar days after the close of the public hearing. If the agency recommends revocation or modification, the report must include a draft resolution implementing the agency's recommendation.
- (e) The council may, by resolution, revoke, refuse or decline to revoke, or modify a special management area major permit within 90 calendar days after receipt of the agency's report and draft resolution; provided that council adoption of a resolution for revocation or modification of a special management area major permit 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 will be deemed not to have been revoked or modified and the resolution will be deemed to have been filed; provided that pursuant to a written request from the permittee, the council may approve an extension of this 90-day period.
- (f) After the filing of a resolution proposing to revoke or modify a special management area major permit, no further resolution may be introduced proposing to revoke or modify the same permit for the same reasons that were stated in the resolution that has been filed; provided that a further resolution may be introduced no earlier than six months following the filing of the initial resolution if a substantial change in circumstances has occurred following the filing of the initial resolution that would cause the development, as approved and conditioned in the permit, to pose a significant threat to public health or safety, as determined by the State department of health, the State department of labor and industrial relations, the U.S. Army Corps of Engineers, the U.S. Surgeon General, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the U.S. Coast Guard, or any other State or federal agency having jurisdiction over the development or the type of health or safety threat



posed by the development.

- (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 of fact and conclusions required under this subsection may be incorporated into either the final resolution or a separate document adopted by the council.
- (h) Before a permit may be revoked or modified pursuant to this section, the council must first hold a public hearing on the proposed revocation or modification, at which 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 each.

All other interested parties must also be given an opportunity to provide oral testimony in accordance with council rules. The permittee, 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 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 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 may rely upon the accuracy of the information provided by the permittee in any action or proceeding to revoke or modify the special management area major permit. If the permittee fails or refuses to

provide requested information, the agency or the council 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 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 major permit has been issued following:
  - (1) The receipt, by the party making the expenditure, of notice of the proposed revocation or modification of the special management area major or minor permit for the development; or
  - (2) The first published notice of the agency hearing; whichever first occurs, and before the adoption or filing of the resolution proposing the revocation or modification is not deemed an expenditure made in good faith reliance upon the issuance of the permit for purposes of determining whether development rights are vested.
- (l) For purposes of this section, a modification to a permit includes but is not limited to a modification to the plans for the development or a modification to the conditions imposed upon the development in the permit.
- (m) An owner of record of property shall be deemed to have been disclosed if a permit applicant, permittee, or owner gave notice to the agency of the owner's status either at the time of the permit application or through a formal written notice to the agency of such ownership status at least one week prior to the date on which the agency is required to give notice to disclosed owners of record.

#### **§ 25-9.7 Voluntary revocation or modification of permits.**

- (a) A special management area 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 revocation or modification of a special management area minor permit 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 revocation or modification in a different manner.
- (c) An application for the revocation or modification of a special management area major permit will be processed in the same manner as an application for the granting of a special management area major permit; provided that if a permit

proposed for modification provides a different process for minor modifications to the permit, that process may be followed for minor modifications.

## **ARTICLE 10: APPEALS**

### **§ 25-10.1 Appeal in accordance with State statute.**

If any person is aggrieved by an order issued by the director pursuant to §25-9.1 and 25-9.2, the person may appeal the order in the manner provided in HRS Chapter 91; provided that no provision of the order shall be stayed on appeal, unless specifically ordered by a court of competent jurisdiction.

## **ARTICLE 11: RULES**

### **§ 25-11.1 Rules.**

The agency shall adopt rules pursuant to HRS Chapter 91 to implement this chapter and HRS Chapter 205A, Part II.

## Chapter 26

### SHORELINE SETBACKS

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#### Article 1. Shoreline Setbacks

##### § 26-1.1 Authority.

Pursuant to the authority conferred by HRS Chapter 205A, the standards and procedures contained in this chapter are hereby established and shall apply to all lands within the shoreline setback area of the city.

##### § 26-1.2 Purpose and intent.

- (a) It is a primary policy of the city to:
- (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, coastal dunes, wetlands, and reefs;
  - (3) Protect and preserve public pedestrian access laterally along the shoreline and to the sea;

- (4) Maintain, protect, and preserve open space and coastal scenic resources; and
  - (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 authorize the department of planning and permitting to adopt rules pursuant to HRS Chapter 91 which generally prohibit within the shoreline setback area any structure or activity that may adversely affect beach processes, public access along the shoreline, or shoreline open space.
  - (c) Finally, it is the purpose of this chapter to name the director of planning and permitting as the council's designee to exercise certain powers and functions granted, and duties imposed, pursuant to HRS Chapter 205A, Part III.

### § 26-1.3 Definitions.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

**Activity.** Any action relating to construction, reconstruction, repair, improvement, grubbing, grading, or stockpiling.

**Annual Coastal Erosion Rate.** The average annual rate of coastal erosion applicable to each zoning lot as determined by historical analysis and shown on the Hawaii Shoreline Study web map as of the effective date of this ordinance, and as thereafter updated by the director by rule to reflect updated data in the Hawaii Shoreline Study web map.

**Applicant.** Any individual, organization, partnership, firm, association, trust, estate, or corporation, and any agency of the federal, the State, or county government.

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

**Beach Processes.** Natural sand movement from wave, current, or wind action, including erosion or accretion of sand.

**Buildable Area.** That portion of a zoning lot excluding the shoreline setback

area, required yards, street setbacks, stream or wetland setbacks, easements, and flag lot stems.

***Coastal Accretion.*** A seaward trend in shoreline movement.

***Coastal Dune.*** One of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may provide some form of protection from wave run-up and be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

***Coastal Erosion.*** A landward trend in shoreline movement.

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

***Council.*** The city council of the City and County of Honolulu.

***Department.*** The department of planning and permitting, which agency shall act as the county planning department under applicable HRS sections.

***Director.*** The director of planning and permitting.

***Dwelling Unit.*** The same as defined in § 21-10.1. For purposes of this chapter, dwelling units include farm dwellings, ohana units, accessory dwelling units, and caretaker units.

***Earth Material.*** Any sand, coral or coral rubble, rocks, soil, fill, or marine deposits.

***Excavation or Cut.*** Any act by which earth material is cut into, dug, or moved, and any condition resulting therefrom.

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

***Grading.*** Any excavation or fill, or any combination thereof.

***Grubbing.*** Any act by which vegetation, including trees, shrubs, or other flora, is dislodged or uprooted from the surface of the ground.

***Hawaii Sea Level Rise Viewer.*** The interactive viewer prepared by the Pacific Islands Ocean Observing System through coordination with the Hawaii Sea Grant Program and the State department of land and natural resources to support the Hawaii Sea Level Rise Vulnerability and Adaptation Report.

***Hawaii Sea Level Rise Vulnerability and Adaptation Report.*** The 2017 report prepared by Tetra Tech, Inc. and the State department of land and natural resources, office of conservation and coastal lands, and adopted by the Hawaii climate change mitigation and adaptation commission.

***Hawaii Shoreline Study.*** The coastal erosion data compiled by the coastal geology group in the school of ocean and earth science and technology at the University of Hawaii.

***Hawaii Shoreline Study Web Map.*** The map created by the coastal geology group in the school of ocean and earth science and technology at the University of Hawaii to visualize and share data from the Hawaii Shoreline Study.

***Landscaping.*** The modification of landscape or soils for an aesthetic or functional purpose, including but not limited to planting of vegetation. It does not include plants or hedges that may act as a shoreline hardening barrier.

***Makai.*** Seaward or in a seaward direction toward the ocean.

***Mauka.*** Landward or in a landward direction from the ocean.

***Minor Shoreline Structure.*** A structure authorized to be located in the shoreline setback area through an approved minor shoreline structure permit that does not adversely affect beach processes, artificially fix the shoreline, interfere with public access or views to and along the shoreline, impede the natural processes or movement of the shoreline or sand dunes, alter the grade of the shoreline setback area, or endanger public health, safety, or welfare.

***Nonconforming Structure.*** A structure or portion of a structure that was previously lawful but is currently located within the shoreline setback area as a result of subsequent beach erosion, or as a result of changes in the law relating to the shoreline setback area.

***Person.*** Any individual, organization, partnership, firm, association, trust, estate, public or private corporation, the State or any of its political subdivisions, or any other legal entity.

***Practicable Alternative.*** An alternative to the proposed project that is available and achievable, taking into consideration existing technology and logistics, which would accomplish the basic purpose of the project while avoiding or decreasing adverse impacts on the shoreline setback area.

***Public Interest.*** Principally benefiting the general public by promoting natural beach processes, expanding public access to the shoreline, enhancing public views,

supporting public health, safety, and welfare, and prioritizing the welfare of the public over the welfare of an individual or individual household.

**Reconstruction.** Rebuilding a lawfully established structure when a licensed professional engineer or architect has valued the cost of the reconstruction at 50 percent or more of the current replacement cost of the structure, or if significant portions of the structure are proposed for replacement, including exterior walls, support beams, floors, ceilings, and the foundation.

**Repair.** Renovating or fixing ordinary damage to a structure if a licensed professional engineer or architect values the cost of the work at less than 50 percent of the current replacement cost of the structure, except as provided in § 26-1.6(a) for the repair or alteration of nonconforming structures. Repairs do not involve enlarging, adding to, or expanding a structure; increasing the size or degree of nonconformity of a structure; or intensifying the use of a structure or its impact on coastal processes. Repairs do not involve substantial improvements to a structure, like-for-like replacement of structural materials, or reconstruction.

**Sea Level Rise Exposure Area.** The mapped zone on the Hawaii Sea Level Rise Viewer, or its successor, representing the aggregate of the following coastal hazard layers: passive flooding (still water high tide flooding), annual high wave flooding (overwash during the largest wave events of the year), and coastal erosion.

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

**Shoreline Hardening.** The process of fortifying the shoreline or shoreline setback area with structures or landscaping, including but not limited to seawalls, revetments, the placement of loose rocks and boulders, geotextile erosion abatement measures, and the planting, watering, and maintenance of landscaping features like naupaka where it will interfere with the natural beach processes.

**Shoreline Lot.** A zoning lot of record, any portion of which lies within the shoreline setback area, or if no certified shoreline survey exists, any portion of which lies within 130 feet of the natural vegetation line or debris line. A zoning lot may be determined to be a shoreline lot notwithstanding the existence of a second zoning lot or parcel situated between the first zoning lot and the shoreline.

**Shoreline Setback Area.** All of the land area between the shoreline and the shoreline setback line.

**Shoreline Setback Line.** That line established by this chapter that runs mauka from and parallel to the certified shoreline at the horizontal plane.



**Shoreline Survey.** A survey map rendered by a registered land surveyor for the purpose of determining the location of the shoreline, in accordance with applicable Hawaii Administrative Rules. A shoreline survey is considered a certified shoreline survey when the location of the regulatory shoreline has been determined by the State board of land and natural resources or the State surveyor in accordance with HRS § 205A-42, or its successor, and the rules adopted pursuant thereto.

**Stockpiling.** The temporary open storage of materials, including earth materials.

**Structure.** Any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment; or anything constructed or erected with a fixed location at or under the ground, or requiring a fixed location on or under the ground, or attached to something having or requiring a fixed location on or below the ground.

#### **§ 26-1.5 Prohibitions within the shoreline setback area.**

- (a) The mining or taking of any earth material from the shoreline setback area is prohibited, with the following exceptions:
  - (1) The inadvertent taking from the shoreline setback area of materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;
  - (2) Where the mining or taking is authorized by a shoreline setback variance granted pursuant to this chapter;
  - (3) The clearing of materials from existing drainage pipes, canals, and the mouths of streams, including clearing for purposes allowed under HRS § 46-11.5; provided that sand removed must be placed on adjacent areas unless the placement would result in significant turbidity, or unsanitary or undesirable conditions;
  - (4) The clearing of the shoreline setback area for State or city maintenance purposes, including clearing for purposes under HRS § 46-12; provided that sand removed 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 that will not, within the lifetime of the structure or duration of the activity, affect beach processes or artificially fix the shoreline and will not interfere with public access, public views, or open space along the shoreline. If, due to beach erosion or other cause, the director determines that a minor structure permitted under this section may affect beach processes or public access, or has become located seaward of the shoreline, the director or other governmental agency having jurisdiction may order its removal;
  - (2) Minor structures and activities necessary for or ancillary to continuation, but not expansion, of agriculture or aquaculture in the shoreline setback area on June 16, 1989; provided that traditional Hawaiian fishpond systems may be restored or expanded as allowed under State law;
  - (3) A structure or activity that is necessary for or ancillary to a public shoreline-dependent facility or improvement, including but not limited to boating, maritime, aviation, public infrastructure, recreation-related, or lifeguard facilities; provided that the structure or activity will not interfere with beach processes or public beach access;
  - (4) Maintenance, repair, reconstruction, and minor additions to or alterations of lawfully established structures included in subdivision (3); provided that privately owned boating, maritime, or ocean sports recreational facilities are specifically not included in this exception;
  - (5) Nonconforming structures or structures that have received a shoreline setback variance;
  - (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.

#### **§ 26-1.6 Nonconforming structures.**

- (a) A nonconforming structure may be repaired or altered; provided that the repairs or alterations do not increase or intensify the nonconformity, and the cumulative valuation of the repairs or alterations:

- (1) Does not exceed 50 percent of the replacement cost over a 10-year period of that portion of the structure that is nonconforming and located 40 feet or less from the certified shoreline; or
  - (2) Does not exceed 75 percent of the replacement cost over a 10-year period of that portion of the structure that is nonconforming and located more than 40 feet from the certified shoreline but makai of the shoreline setback line.
- (b) If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it may not be reconstructed except in conformity with the provisions of this chapter and the shoreline setback rules, as may be amended or superseded.
  - (c) Reconstruction of a nonconforming structure within the shoreline setback area requires a shoreline setback variance.

**§ 26-1.7 Subdivision actions.**

- (a) Except as provided in this chapter, no new subdivision action, including the subdivision or consolidation of land, involving an existing shoreline lot and the creation of new zoning lots may be approved, unless each new lot:
  - (1) Can accommodate a shoreline setback line established at 60 feet mauka from the certified shoreline until July 1, 2024, after which each newly created shoreline zoning lot must accommodate a shoreline setback line established at 130 feet mauka from the certified shoreline; provided that an exception may be granted to subdivision actions involving the subdivision or consolidation of land only for the purpose of creating easements or adjusting zoning lot lines that will not result in any increase in the number of permitted dwelling units, nonresidential structures, or zoning lots; and
  - (2) Has a buildable area adequate to accommodate the proposed structures or activities, including accessory uses and structures, such as parking.

Accreted lands obtained from the State pursuant to HRS § 501-33 may not be included as part of the land area when calculating the zoning lot size available for subdivision.
- (b) Subdivision of existing shoreline lots for the purpose of widening roadways designated on the public infrastructure maps adopted pursuant to Chapter 4, Article 8, may be permitted upon the review and approval of the director.
- (c) New residential zoning lots may not be approved, unless each new lot:

- (1) Has a buildable area of at least 5,000 square feet;
- (2) Has a buildable area outside of the shoreline setback area with a minimum depth and width of at least 50 feet;
- (3) Is subdivided perpendicular to the shoreline to create deep lots that maximize opportunities to place structures far from the shoreline; and
- (4) Is not a flag lot.

**§ 26-1.8 Criteria for granting a shoreline setback variance.**

- (a) The director, as provided in § 26-1.10, may grant a shoreline setback variance upon finding that, based upon the record presented, the proposed structure or activity is necessary for or ancillary to:
  - (1) Cultivation of crops;
  - (2) Aquaculture;
  - (3) Landscaping; provided that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline; or
  - (4) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the director also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of a public beach and will be necessary to stabilize an eroding shoreline.
- (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:
  - (1) *Shoreline-dependent facility standard.* A shoreline setback variance may be granted for 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 water sport recreational facilities; provided that the proposal is the practicable alternative that best conforms to the purpose of the shoreline setback rules.
  - (2) *Public interest standard.* A shoreline setback variance may be granted for a structure or activity that is necessary for or ancillary to facilities or improvements by a public agency or 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 that best conforms to the purpose of this chapter and the shoreline setback rules.

(3) *Hardship Standard.*

- (A) A shoreline setback variance may be granted for a structure or activity if hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area.
- (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 this chapter and the shoreline setback rules;
  - (ii) The applicant's proposal is due to unique circumstances, 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 that best conforms to the purpose of this chapter and the shoreline setback rules. The analysis of the practicable alternatives must include a thorough assessment of potential impacts and consideration of mitigation measures to avoid or minimize impacts, including but not limited to the relocation or reconfiguration of structures and the restoration of coastal resources.
- (C) A shoreline setback variance to artificially fix the shoreline may not be granted in areas with sandy beaches or dunes, or where artificially fixing the shoreline may interfere with existing recreational and waterline activities or natural sand and sediment replenishment that occur as part of beach processes, unless the granting of the shoreline setback variance is clearly demonstrated to be in the public interest.
- (D) Before granting a 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 zoning lot.

- (E) Hardship may not be determined as a result of a zone change, plan review use approval, subdivision approval, cluster housing approval, planned development housing approval, conditional use permit, or any other discretionary land use permit granted after June 16, 1989.

#### **§ 26-1.9 Conditions on shoreline setback variances.**

- (a) No shoreline setback variance may be granted unless appropriate conditions are imposed:
  - (1) To maintain safe access to and along the shoreline or adequately compensate for its loss;
  - (2) To minimize risk of adverse impacts to coastal, beach, and marine processes;
  - (3) To minimize the risk of existing legal or proposed structures falling and becoming loose rocks, sharp or otherwise dangerous debris, or rubble on public property; and
  - (4) To minimize adverse impacts on public views to, from, and along the shoreline.
- (b) The director may condition the approval of a shoreline setback variance for structures, activities, and uses within the shoreline setback area on the property being ineligible for subsequent shoreline setback variances to construct shoreline hardening within the shoreline setback area, and stipulate that hardship may not be determined as a result of the prior shoreline setback variance approval.
- (c) The city is not liable for any losses, liabilities, claims, or demands arising out of or resulting from damages to structures or property within the shoreline setback area approved by a shoreline setback variance.

#### **§ 26-1.10 Authority to act on shoreline setback variance applications.**

- (a) The director shall act upon all shoreline setback variance applications according to the criteria set forth in this chapter.

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

**§ 26-1.11 Public hearings.**

- (a) The director shall hold a public hearing on each shoreline setback variance application that has been accepted as complete.
- (b) The director shall give reasonable notice of the public hearing for a shoreline setback variance application to the applicant, affected neighborhood boards and community associations, and persons that have requested notice of the public hearing. The applicant must mail notices to neighboring property owners within 300 feet of the zoning lot, and persons that have requested receipt of a notice; provided that if a neighboring property is a condominium project, notice to the association of apartment owners of the condominium project will serve as notice to the owners of the units in the project.

**§ 26-1.12 Application review and processing fees.**

- (a) 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.

<b>Application Type</b>	<b>Review Fee</b>	<b>Processing Fee</b>	<b>TOTAL FEE</b>
Shoreline Setback Variance	\$400	\$2,000	\$2,400
Environmental Assessment	\$200	\$1,000	\$1,200
Environmental Impact Statement	\$400	\$2,000	\$2,400
Minor Shoreline Structure Permit	\$100	\$500	\$600
Shoreline Setback Line Determination	No fee	\$600 per tax map key	\$600 per tax map key
Confirmation of Shoreline Structure Nonconforming Status	No fee	\$600 per tax map key	\$600 per tax map key

- (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. 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) Review fees and processing fees will be doubled for permits and environmental disclosure documents submitted:
  - (1) After a notice of violation has been issued for the activity or construction;  
or
  - (2) After the proposed work is completed.
- (d) Fees may be waived for city projects.

#### **§ 26-1.13 Civil fines.**

- (a) Any person violating this chapter, any rule adopted pursuant thereto, any permit issued pursuant thereto, or any condition of a shoreline setback variance will, upon notice issued pursuant to § 26-1.14, be deemed to have committed a civil violation and will be subject to an initial civil fine not to exceed \$100,000 per violation and a maximum daily fine of \$10,000 until the violation is corrected or a shoreline setback variance is granted.
- (b) Any order to pay civil fines will not be stayed by the submittal of a shoreline setback variance application after the applicant has initiated, completed, or been cited for the activity.

#### **§ 26-1.14 Enforcement.**

- (a) *Issuance of notice of violation and order.* If the director determines that any person is violating this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of a shoreline setback variance, the director may have the person served 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 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 that has been violated;
    - (D) The nature of the violation; and



- (E) The location of the violation and the date and time that the violation was discovered.
- (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 \$100,000 in the manner, at the place, and before the date specified in the order;
  - (D) Pay a civil fine not to exceed \$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 must advise the person that the order will become final 30 days after the date of its service unless written request for a hearing is mailed or delivered to the director prior to expiration of the 30-day period.

- (b) *Effect of order—right to hearing.* The order issued by the director under this section will become final 30 days after the date of the service of the order. The person in receipt of the notice may request a hearing before the director. A request for a hearing will not stay any provision of the order.

The request for a hearing will be considered timely if a written request is delivered or mailed and postmark dated to the director within 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 will be conducted by the director or the director's designee in accordance with HRS Chapter 91. Following the hearing, the director or the director's designee may affirm, modify, or rescind the order, as the director 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 an order, the director need only show that a notice of violation and order was served, a hearing was held or the 30-day period during which a hearing may be requested had expired without such a request, a civil fine was imposed, and the fine imposed has not been paid.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of any shoreline setback variance in addition to any other remedy provided for under this chapter.

- (d) *Nonexclusiveness of remedies.* The remedies provided in this chapter for enforcement of this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of any shoreline setback variance 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 an order will be stayed on appeal, unless specifically ordered by a court of competent jurisdiction.

#### **§ 26-1.15 Illegal shore protection structures.**

Where the shoreline is affected by a structure that has not been authorized pursuant to governmental agency permits required by law:

- (1) If any part of the structure is located within the current tax map boundaries of a privately-owned parcel, then for purposes of enforcement of this chapter, the structure will be construed as being located entirely within the shoreline setback area; and
- (2) No building permit or grading permit will be granted on a shoreline lot unless and until the illegal structure is removed or corrected.

#### **§ 26-1.16 Rules.**

The director shall adopt rules pursuant to HRS Chapter 91 to implement this chapter and HRS Chapter 205A, Part III. The rules:

- (1) May identify high-quality sandy beaches that should be preserved;
- (2) May include guidelines or prohibitions relating to the types of shore protection structures that may or may not be permitted on high-quality beaches and other beaches;

- (3) May, after the initial determination of the average annual rate of coastal erosion on the effective date of this ordinance, update the determination of the average annual rate of coastal erosion as necessary to reflect updated data in the Hawaii Shoreline Study web map; and
- (4) Must set forth the procedures and informational requirements by which a property owner may submit an application requesting approval of an alternative coastal erosion rate methodology and data if the property owner believes the annual erosion rate applicable to the zoning lot does accurately represent the actual erosion rate for that zoning lot.

Note:

- 1. Any application for a shoreline setback variance submitted to the Director of Planning and Permitting and accepted as complete prior to July 1, 2024, is not affected by the determination of the shoreline setback line under § 26-1.4, Revised Ordinances of Honolulu 2021, or any successor ordinance;
- 2. Any application for a subdivision action submitted to the Director of Planning and Permitting and accepted as complete prior to July 1, 2024, is not affected by the determination of the shoreline setback line for subdivision actions involving an existing shoreline zoning lot and the creation of new zoning lots under § 26-1.7(a)(1), Revised Ordinances of Honolulu 2021, or any successor ordinance.