

DEPARTMENT OF PLANNING AND PERMITTING  
CITY AND COUNTY OF HONOLULU

**AMENDMENTS TO CHAPTERS 11, 12, 13, 14, 15, AND 17,  
PART 2 RULES RELATING TO SHORELINE SETBACKS AND  
THE SPECIAL MANAGEMENT AREA**

SUMMARY

1. §11-1 is amended.
2. §12-1 is amended.
3. §12-2 is amended.
4. §12-4 is amended.
5. §12-7 is amended.
6. §12-11 is amended.
7. §13-2 is amended.
8. §13-5 is amended.
9. §13-6 is amended.
10. §14-1 is amended.
11. §14-2 is amended.
12. §15-1 is amended.
13. §15-2 is amended.
14. §15-4 is added.
15. §17-2 is amended.
16. §17-9 is deleted.
17. §17-10 is renumbered §17-9 and amended.

DEPARTMENT OF PLANNING AND PERMITTING

PART 2      RULES RELATING TO SHORELINE SETBACKS AND  
                 THE SPECIAL MANAGEMENT AREA

SUBPART 1 GENERAL PROVISIONS

CHAPTER 11

DEFINITIONS

§11-1          Definitions

§11-1          Definitions.

“Action of the director” means a decision rendered on an application for a special management area minor permit or special management area emergency permit pursuant to the Special Management Area Ordinance; a decision and order rendered on a shoreline setback variance pursuant to the Shoreline Setback Ordinance; a decision rendered on an application for minor structures and activities pursuant to §15-2; or the issuance of a civil fines program enforcement order pursuant to §18-2 and §20-2.

“Activity” means any grubbing or any grading or stockpiling of earth materials.

“Applicant” means any individual, organization, partnership, firm, association, trust, estate, or corporation and any agency of federal, state, or county government.

“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.

“Civil fine” and “administrative fine” means any monetary penalty, imposed by a competent judicial authority or by the director, on a violator for a violation of the Shoreline Setback Ordinance or the Special Management Area Ordinance.

“Civil fines program” means the program for imposing civil fines as a means of enforcing violations of the Shoreline Setback Ordinance and Special Management Area Ordinance, which includes the addition of unpaid civil fines to taxes, fees and charges collected by the city.

“Collecting agency” means an agency of the city or its representative, authorized to collect specified taxes, fees or charges established by statute, act, ordinance, rules or regulations.

“Contested case hearing” means a proceeding in which legal rights, duties, or privileges of specific parties are determined pursuant to H.R.S. §§91-9, 91-10, 91-11, 91-12 and 91-13.

“Days” means calendar days, unless otherwise specified.

“Decision and order” means the written findings of fact, conclusions of law and decision and order of the director.

“Department” means the department of planning and permitting, City and County of Honolulu.

“Director” means the director of planning and permitting, City and County of Honolulu, or the director’s designated representative.

“Earth material” means any sand, coral or coral rubble, rocks, soil, fill, or other marine deposits.

“Effective date” means the date upon which the director signs the written decision in any matter under his jurisdiction.

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

“Fill” means any earth material which is placed or deposited by artificial means and any condition resulting therefrom.

“Grading” means any excavation or fill or any combination thereof, as defined in Section 14-13.3, Revised Ordinances of Honolulu, as amended.

“Grubbing” means any act by which vegetation, including trees, shrubs or other plants, is dislodged or uprooted from the surface of the ground, as defined in Section 14-13.3, Revised Ordinances of Honolulu, as amended.

“Intervention” means the process by which someone other than the appellant or the director becomes a party in a contested case hearing on the appeal.

“Nonconforming structure” means a structure or portion of a structure which was previously lawful but which is 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.

“Order” means a document signed by the director, identifying a violation, specifying corrective action and assessing a fine or other penalty as provided by these rules.

“Party” means the appellant; and the director; and any intervenor who has complied with §12-4 and has been admitted by the director as a party.

“Practicable alternative” means an alternative to the proposed project which is available and capable of being done, taking into consideration existing technology and logistics, and which would accomplish the basic purpose of the project while avoiding or having less adverse impact on the shoreline area.

“Shore protection structure” means a structure which may artificially fix the location of the shoreline, including but not limited to groins, seawalls and revetments.

“Shoreline” means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves; or, as may otherwise be defined in H.R.S. §205A-1, as amended.

“Shoreline area” means all of the land area between the shoreline and the shoreline setback line, or waiver line as may be applicable. Under certain conditions, the shoreline area may include the area between mean sea level and the shoreline.

“Shoreline lot” means a zoning lot of record any portion of which lies within the shoreline area, or when there is no certified shoreline survey, any portion of which lies within 55 feet inland of the shoreline. A lot may be determined to be a shoreline lot notwithstanding the existence of a second lot between the lot and the shoreline.

“Shoreline setback line” means that line established pursuant to the Shoreline Setback Ordinance, which runs inland from and parallel to the certified shoreline at the horizontal plane.

“Shoreline setback ordinance” means Ordinance No. 92-34, as amended, which is codified as Chapter 23, Revised Ordinances of Honolulu, 1990, as amended.<sup>1</sup>

“Shoreline survey” means a survey performed by a registered land surveyor in the State of Hawaii for the purpose of determining the location of the shoreline, in accordance with Hawaii Administrative Rules, Chapter 13-222, “shoreline certification.”

“Special management area ordinance” means Ordinance No. 84-4, as amended, codified as Chapter 25, Revised Ordinances of Honolulu, 1990, as amended.

“Special management permit” means a special management area use permit, a special management area minor permit, or a special management area emergency permit, as defined in Chapter 25, Revised Ordinances of Honolulu 1990, as amended.

---

<sup>1</sup> Note: The shoreline setback ordinance was preceded by a 10-foot “setback from zone of wave action,” adopted under Ordinance No. 2837 on August 19, 1966; and, at the effectuation of the Comprehensive Zoning Code (Ordinance No. 3234) on January 2, 1969, it was incorporated into Section 21-1301, Revised Ordinances of Honolulu. The setback from zone of wave action was ultimately superseded by the establishment of the shoreline setback ordinance.

“Stockpiling” means the temporary open storage of earth materials, as defined in Section 14-13.3, Revised Ordinances of Honolulu, as amended.

“Structure” means any portion of any building, 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.

“Unpaid civil fine” means any outstanding civil fine due and owing to the city by a violator, in whole or in part.

“Violation” means the use of any structure or land, or the location or construction of any structure without a special management permit or shoreline setback variance; and failure to comply, in whole or in part, with the terms or conditions of any permit or authorization issued pursuant to Chapter 23 or Chapter 25, Revised Ordinances of Honolulu.

“Violator” means any individual, organization, partnership, firm, association, trust, estate, public or private corporation, or any other legal entity that has an interest in the property on which the violation occurs; and may include any or all of the following; fee owner, leaseholder, subleaseholder and other assignee, tenant, contractor or any other person, party or parties responsible for a violation or with an interest in the property on which the violation occurs.

“Waiver line” means that line established by the director on a shoreline lot landward of which activities or structures may be allowed without a certified shoreline survey.

[Eff: 6/13/1994; am: 5/17/1998; am: 1/16/2012] (Auth: ROH §§23-1.3, 23-1.16, 25-1.3, HRS §205A-1, HRS §91-2) (Imp: ROH §23-1.16, HRS §91-2)

## CHAPTER 12

### CONTESTED CASE HEARINGS

§12-1	Applicability
§12-2	Request for hearing
§12-3	Pre-hearing procedure
§12-4	Intervention
§12-5	Hearing
§12-6	Evidence
§12-7	Order of procedure
§12-8	Subpoenas
§12-9	Motions
§12-10	Arguments, briefs and proposed findings
§12-11	Decision and order

§12-1 Applicability. These procedures shall apply to hearings pursuant to Chapters 15, 17, 18 and 20, and the appeal of an action by the Director on a decision rendered pursuant to Sections 25-3.3(e)(2) and 25-7.1(a), Revised Ordinances of Honolulu, 1990, as amended.

[Eff: 6/13/1994; am: 1/16/2012] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2)  
(Imp: ROH §23-1.16, ROH §25-9.2)

§12-2 Request for hearing. (a) Any person who is specifically, personally, and adversely affected by an action of the director may request a hearing to appeal any part or requirement of the action. The request must be made in accordance with the following requirements:

(b) The request shall include:

- (1) The appellant's name, mailing address, and telephone number.
- (2) Identification of the property by street address and tax map key number.
- (3) The appellant's interest in the property, or if the appellant has no property interest, how the appellant is specifically, personally, and adversely affected by the action of the director.
- (4) Designation of any specific provision of the ordinance or rules relevant to the action of the director, as may be applicable.
- (5) The action of the director and the date the action was taken.
- (6) Reasons for requesting a hearing, including statements as to why the appellant believes the action of the director is in error.

- (7) A signed, valid check or money order payable to the City and County of Honolulu in the amount of \$400.00, which shall be the contested case filing fee.
  - (c) The request must be signed in black ink by the appellant or the appellant's duly authorized representative or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of that person's knowledge, information, and belief, every statement made is true and correct and no such statements are misleading; and that the request is not interposed for delay.
  - (d) The original and four copies of the request shall be filed.
  - (e) The written request for a hearing must be received at the department within 30 days of the date of mailing, personal service, or publication of the action of the director in a newspaper of general circulation.
  - (f) If the request is not made within 30 days, the director may refuse to hold a hearing. Failure to comply with any provisions of this section shall constitute ground for refusal to hold the hearing.
- [Eff: 6/13/1994; am: 5/17/1998; am: 1/16/2012] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

§12-3      Pre-hearing procedure. (a) Within 10 days after receipt of the request for a hearing, the director shall forward copies of the request to the fee owner and lessee, if any, of the affected property, if they are not the appellant.

- (b) The director shall, upon consultation with the parties, set the date for the hearing on the appeal.
- (c) At least 10 days prior to the scheduled date for hearing, the director, or the director's designated representative, may hold a prehearing conference for the purpose of arriving at a settlement or clarification of the issues and, to the extent possible, an agreement on facts, matters, or procedures as may facilitate and expedite the hearing or adjudication of the issues.
- (d) Briefs, motions, and supporting, opposing and reply memoranda may be submitted to the director by the parties as they deem appropriate, except that the director will not accept any motion or memorandum submitted less than five days prior to the scheduled hearing date for an appeal.
- (e) All parties shall provide an original and four copies of each document submitted to the director for filing and it shall be the responsibility of each party to provide copies of the documents to all parties to the appeal and to

file a certification with the director attesting to the transmittal of the document, setting forth therein the name of the document, the date of the transmittal, the manner of delivery, and the name and address to which the document was transmitted.

- (f) Any witness subpoena requests shall be filed at the time of the prehearing conference.
- (g) Any party may by written demand, request of any other party to the proceedings, the full disclosure of the identity of all witnesses to be called by the other party and all exhibits to be introduced by the other party at the hearing. All disclosures shall be made no later than 7 days prior to the date set for the hearing. The director at the director's discretion may also order that the parties exchange a list of exhibits and witnesses prior to the hearing. The failure to comply with a disclosure request may result in the evidence or witness not being permitted to be presented at the hearing.

[Eff: 6/13/1994; am: 5/17/1998] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2)  
(Imp: ROH §§23-1.14, 23-1.16, ROH §25-9.2)

§12-4      Intervention. (a) Any person or agency requesting to intervene as a party shall file a petition with the department within 10 days prior to the date set for the hearing on the appeal.

- (b) The director will not accept any application submitted later than the five days before the prehearing conference.
- (c) The petition to intervene shall include the following information:
  - (1) The nature of the petitioner's statutory or other right to intervene as a party to the proceedings, and how the petitioner is specifically, personally, and adversely affected by the action of the director.
  - (2) The nature and extent of the petitioner's interest in the proceedings, and, if the petitioner is an abutting property owner, the tax map key description of the property.
  - (3) A statement of the specific issues to be raised or contested by the petitioner is the contested case hearing.
  - (4) The effect of any decision in the proceeding on the petitioner's interest.
- (d) If any party opposes the petition for intervention, that party may file written objections to the petition. Such objections shall be filed with the department and served on all parties and the petitioner within 48 hours of the date set for the hearing on the appeal.



- (e) Applications to intervene shall be disposed of as follows:
- (1) Intervention shall be granted to an applicant who has a property interest in the property which is the subject of the appeal hearing.
  - (2) A petition to intervene shall be freely granted, provided that the director may deny a petition to intervene when in the director's discretion it appears that:
    - (A) The position of the party requesting intervention is substantially the same as the position of a party already admitted to the proceedings.
    - (B) The admission of additional parties will render the proceedings inefficient and unmanageable.

[Eff: 6/13/1994; am: 5/17/1998; am: 1/16/2012] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

§12-5 Hearing. (a) The hearing shall be conducted in conformity with the applicable provisions of §§91-9, 91-10, and 91-11, Hawaii Revised Statutes.

- (b) The director shall provide written notice of the hearing on an appeal to all parties to the appeal by certified mail, return receipt requested, or by publication in accordance with the provisions of §91-9.5, Hawaii Revised Statutes.
- (c) Hearings shall be open to the public.
- (d) All hearings shall be conducted by the director or by a hearings officer appointed by the director, who shall have the necessary powers to conduct the hearing and rule on procedural matters related thereto.
- (e) At the hearing, parties shall be entitled to call witnesses, to cross-examine witnesses and to make legal arguments.
- (f) The hearings officer shall have the power to exclude irrelevant, immaterial or unduly repetitious evidence.

(g) A transcript of the hearing may be obtained upon payment of a fee.  
[Eff: 6/13/1994] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH § 25-9.2)

§12-6 Evidence. (a) The admissibility of evidence at a hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence

shall be admitted. Irrelevant, immaterial, cumulative, or unduly repetitious material or testimony may be excluded from evidence.

- (b) **Prepared Testimony.** With the approval of the hearings officers, a witness may read into the record his testimony on direct examination. The witness may be subject to cross-examination.

[Eff: 6/13/1994] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH § 25-9.2)

§12-7 **Order of procedure.** The department's evidence shall be presented first, and shall be followed by the presentation of evidence by the party subject to the action. The interveners shall be heard in such order as the hearings officer directs.  
[Eff: 6/13/1994; am: 1/16/2012] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2)  
(Imp: ROH §23-1.16, ROH § 25-9.2)

§12-8 **Subpoenas.** (a) **Subpoena of Witness.** Any request for the issuance of a subpoena, requiring the attendance of a witness for the purpose of taking oral testimony at the hearing, shall be in writing and shall state the reasons why they testimony of the witness is believed to be material and relevant to the issues involved. Only a party, the department, or the hearings officer may request the issuance of a subpoena.

- (b) **Subpoena of Documents.** Any request for the issuance of a subpoena for the production of documents shall be in writing; shall specify the particular document or record or part thereof desired to be produced; and shall state the reasons why the production thereof is believed to be material to the issues involved.

- (c) The director or hearing officer may issue a subpoena. The name and address of the witness shall be inserted in the original subpoena and a copy shall be filed in the proceeding. The subpoena shall show at whose instance the subpoena is issued. No subpoena shall be issued unless the party requesting the subpoena has complied with (a) and (b) above.

[Eff: 6/13/1994] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH § 25-9.2)

§12-9 **Motions.** (a) All motions made during a hearing shall be made part of the record of the proceedings.

- (b) **Motions to dismiss a case** shall be filed at least 48 hours before the time of the hearing.
- (c) All motions other than those made during a hearing shall be subject to the following:

- (1) Motions shall be made in writing, shall briefly state the relief sought, and shall be accompanied by affidavits or memoranda setting forth the grounds upon which they are based.
- (2) The moving party shall serve a copy of all motion papers on all other parties and shall, within three days thereafter, file with the director the original and four copies with certificate of service on all parties.
- (3) Answering motions, if any, shall be served on all parties; and the original and four copies, with certificate of service on all parties, shall be filed with the director within five days after service of the motion papers, unless the director directs otherwise.

[Eff: 6/13/1994; ren §12-9 5/17/1998] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2)  
(Imp: ROH §23-1.16, ROH § 25-9.2)

§12-10 Arguments, briefs, and proposed findings. (a) Any party shall be entitled, upon request made before the close of the hearing, to present oral argument.

- (b) Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of facts and conclusions of law, or both, within the time fixed by the hearings officer, but not in excess of fifteen days after the close of the hearing.
- (c) The hearings officer may direct oral argument or the filing of briefs or proposed findings of facts, conclusions of law, or both, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein.
- (d) A request for extension of time within which to file a brief of proposed findings shall be made in writing to the hearings officer at least three days and shall be accompanied by an affidavit setting forth the grounds upon which it is based and indicating the position of the other parties with regard to the request.

[Eff: 6/13/1994; ren §12-10 5/17/1998] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2)  
(Imp: ROH §23-1.16, ROH § 25-9.2)

§12-11 Decision and order. (a) An appeal shall be sustained if the director finds that the action of the director was rendered or issued based on an erroneous finding of material fact, or is otherwise arbitrary and capricious, or if there are extenuating circumstances.

- (b) The party prevailing in the appeal shall prepare a proposed order for adoption by the director which shall set forth the findings of fact and conclusions of law material to the director's decision. The proposed order

shall be filed with the director no later than 60 days after the announcement of the decision.

- (c) The final order shall be transmitted to all parties by delivery or regular mail.
- (d) At any time before the final decision, the director or hearings officer, at his or her discretion or upon motion for good cause, may reopen the hearing for purposes of taking further evidence. The reopening of the hearing shall be at the sole discretion of the director or hearings officer.

[Eff: 6/13/1994; am and ren §12-11 5/17/1998; am: 1/16/2012] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH § 25-9.2)

## SUBPART 2 SHORELINE SETBACKS

### CHAPTER 13

#### DETERMINATION OF THE SHORELINE SETBACK LINE

§13-1	Distance from the shoreline
§13-2	Shoreline setback for new subdivisions
§13-3	Adjustment for reduced setback
§13-4	Certified shoreline survey required
§13-5	Waiver of certified shoreline survey
§13-6	Expansion of shoreline area

§13-1      Distance from the shoreline. The shoreline setback line shall be determined at the distance inland established under the shoreline setback ordinance, provided that every point of the shoreline setback line shall be at least the required distance from every point at the shoreline.

[Eff: 61/3/1994] (Auth: ROH §23-1.4, HRS §91-2) (Imp: ROH §23-1.4, HRS §91-2)

§13-2      Shoreline setback for new subdivisions. (a) Except as provided in (b), new subdivisions or consolidations of existing shoreline lots shall accommodate a 60-foot shoreline setback where:

- (1) An existing lot is subdivided into two or more parcels.
  - (2) Consolidation which could result in an increase in the number of permitted dwelling units, or the permitted density (floor area) or building area of nonresidential structures utilized for principal uses, as provided in Chapter 21, Revised Ordinances of Honolulu ("The Land Use Ordinance").
- (b) The following shall be exempt from the 60-foot shoreline setback requirement:
- (1) Subdivision or consolidation of land only for the purpose of adjusting lot lines, which does not increase the number of lots.
  - (2) Creation, adjustment, or elimination of easements.
  - (3) Subdivision of an existing shoreline lot into new lots which are not in the coastal high hazard district and where the entire shoreline for the new lots is characterized by either a fixed, rocky shoreline or an

authorized shore protection structure, in which case the new lots may be allowed to accommodate a 40-foot shoreline setback.

[Eff: 6/13/1994; am: 1/16/2012] (Auth: ROH §23-1.7, HRS §91-2) (Imp: ROH §23-1.7, HRS §91-2)

§13-3      Adjustment for reduced setback. (a) An owner or applicant may apply for, and the director may grant a reduced setback pursuant to criteria established in Chapter 23-1.4(b).

(b) Application for adjustment may be made prior to or in conjunction with other permits. The application shall include a current certified shoreline survey and meet the requirements of §13-1 and shall also include an additional plot plan which shows dimensions of the buildable depth of the lot.

(c) Approval or denial may be given by letter of through processing of the accompanying permit, if one is submitted to the department.

[Eff: 6/13/1994; am: 5/17/1998] (Auth: ROH §23-1.4) (Imp: ROH §23-1.4)

§13-4      Certified shoreline survey required. (a) Except as provided in §13-5, a certified shoreline survey shall be required for an application for a subdivision, or for requests to conduct an activity or to construct a structure on a shoreline lot.

(b) A certified shoreline survey shall be valid for a period of twelve months, except that:

(1) Where the shoreline is fixed by a manmade structure which has been approved by government agencies, the certification shall be valid for a longer period as may be determined by the board of land and natural resources; and

(2) Where an application for a government permit or approval has been submitted with a valid certified shoreline survey, the director may allow the certified shoreline survey to be used for purposes of processing the application for a period not to exceed two years from the date of certification.

(c) Notwithstanding the above, the director may require submittal of a new certified shoreline survey when he finds that a significant change has occurred along the shoreline.

[Eff: 6/13/1994] (Auth: ROH §23-1.4) (Imp: ROH §23-1.4)

§13-5      Waiver of certified shoreline survey. (a) The director may waive the requirement of a certified shoreline survey for the following:

- (1) Minor structures and activities permitted under §§15-1(3), (4), (5), (6), (8), and (14).
- (2) A proposed structure or activity allowed under a variance, wherein the variance application included a certified shoreline survey, provided that the activity or construction occurs within six months of the variance decision.
- (3) Repairs to nonconforming structures.
- (4) A proposed structure or activity that will be located inland of the waiver line established as provided in (b).
- (5) When the director finds that there is an emergency, and the applicant has submitted a shoreline survey for certification.
- (6) The shoreline area is affected by an illegal shore protection structure or other structure seaward of the waiver line, and the applicant is unable to obtain shoreline certification, provided that:
  - (A) The applicant submits a shoreline survey; and
  - (B) The director shall determine the location of the shoreline and the shoreline setback line, based on the best available information, solely for the purpose of processing an after-the-fact variance application for the structure.
- (7) A proposed structure or activity inland of the presumed shoreline setback provided that:
  - (A) The shoreline is fixed by either a structure, such as a seawall or revetment, or naturally, as in the case of a rocky or coral shoreline; and
  - (B) The applicant produces a previously certified shoreline survey; and
  - (C) Based upon reasonable evidence submitted, the director determines that the proposed structure or activity is located inland from the presumed shoreline setback line.
- (8) Public improvements which implement federal, state, or city programs and policies specifically intended to address matters of public health and safety, or to protect the environment or improve environmental conditions; provided the governmental agency responsible for implementing the public improvements shall submit

its request and justifications in writing to the director for a waiver of the certified shoreline survey requirement, and shall provide a survey of the shoreline as part of its written request.

(b) The director may establish a waiver line which runs inland:

- (1) No less than 55 feet from and parallel to the shoreline at the horizontal plane for those cases where the shoreline setback line would have been normally set at 40 feet inland and parallel to the certified shoreline at the horizontal plane.
- (2) No less than 75 feet from and parallel to the shoreline at the horizontal plane for those cases where the shoreline setback line would have been normally set at 60 feet inland and parallel to the certified shoreline at the horizontal plane.
- (3) In those cases where a reduced shoreline setback has been established by the director, the director may establish a waiver line inland from the shoreline a distance no less than the sum of the reduced setback distance plus 15 feet at the horizontal plane.

[Eff: 6/13/1994; am: 5/17/1998; am: 1/16/2012] (Auth: HRS §91-2) (Imp: HRS §91-2)

§13-6 Expansion of shoreline area. (a) If a waiver line has been established by the director, the shoreline area shall mean all of the area between the shoreline and the waiver line.

- (b) Where the shoreline is affected by a man-made structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then the entire structure shall be construed to be within the shoreline area.
- (c) The director may extend the shoreline area to include the area between the shoreline and the mean sea level, if any portion of a man-made structure that has not been authorized with government agency permits required by law extends:
  - (1) Seaward of private property boundaries; or
  - (2) Seaward of the existing shoreline or a historical shoreline; or
  - (3) Upon public lands along the shoreline, or upon lands subject to claim by the public.

[Eff: 6/13/1994; am: 1/16/2012] (Auth: ROH §23-1.4, HRS §91-2) (Imp: ROH §23-1.4, HRS §91-2)



## CHAPTER 14

### MAPPING AND MARKING OF THE SHORELINE AND THE SHORELINE SETBACK LINE

- §14-1 Applications on shoreline lots
- §14-2 Shoreline survey maps
- §14-3 Marking of shoreline and shoreline setback line during construction

§14-1 Application on shoreline lots. (a) All applications for an activity or construction of a structure on a shoreline lot, including building stockpiling, grubbing, and grading permit applications, shall include:

- (1) An accurate plot plan, drawn to scale, showing the location of the shoreline, the shoreline setback line, the waiver line (if applicable), the property boundaries, and any existing structures within the shoreline area.
  - (2) A copy of the certified shoreline survey, unless waived as provided by Chapter 13.
  - (3) Elevation plans of all structures showing the shoreline setback line or waiver line as a vertical plane. If structures or activities are proposed within the shoreline area, the elevation plans shall also include the existing beach profile, and mean sea level at the horizontal plane datum.
  - (4) Other relevant information as may be required by the director.
- (b) All plans for construction of any shore protection structure shall be prepared and stamped by a structural engineer registered in the State of Hawaii.

[Eff: 6/13/1994; am: 1/16/2012] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-2 Shoreline survey maps. Shoreline survey maps submitted with permit applications shall show:

- (a) The measured distance between the shoreline and the seaward property line at each side boundary intersection; and
- (b) The location of all structures located within the shoreline area.

[Eff: 6/13/1994; am: 1/16/2012] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-3 Marking of shoreline and shoreline setback line during construction.

- (a) From the time that a building permit, grading permit or director's approval for a minor activity or structure is issued, until the time that the activity or structure is completed, the applicant shall place and maintain stakes and flags at the location of the shoreline, the shoreline setback line, and the waiver line, if applicable, as shown on the approved plans.
- (b) Stakes and flags shall be placed at intersections with side yard boundaries and at 30-foot intervals, and shall be clearly visible from the public lands seaward of the shoreline.

[Eff: 6/13/1994] (Auth: HRS §91-20) (Imp: HRS §91-2)

## CHAPTER 15

### MINOR STRUCTURES AND ACTIVITIES

- §15-1      Applicability
- §15-2      Director's approval required
- §15-3      Application requirements

§15-1      Applicability. (a) Minor structures and activities may be permitted in the shoreline setback, if they do not affect beach processes or artificially fix the shoreline; do not interfere with public access, public views or open space along the shoreline; and do not otherwise endanger the public health, safety or welfare.

(b)      Minor structures and activities include, but are not limited to the following:

- (1)      Open-work metal, open-work wood, or open-work vinyl (or similar synthetic material) fences no more than six feet in height, with individual post foundations no more than four inches in diameter or width. For the purpose of this section, "open-work" shall mean at least 50 percent open;
- (2)      Underground potable or irrigation water and electrical conduits no more than one-inch in diameter;
- (3)      Irrigation fixtures and ground lighting fixtures no more than 30 inches in height;
- (4)      Tree-mounted lighting fixtures directed away from the shoreline;
- (5)      Activities related to installation of trees, shrubs and ground cover, provided that they do not artificially extend the shoreline area and do not require a grading or grubbing permit;
- (6)      Masonry headers or pavers needed for a border or pathway; areas of headers or pavers shall not be greater than 20 square feet and when combined with all other structures within the shoreline setback, shall comprise no more than ten percent of the area between the shoreline and shoreline setback line;
- (7)      Lifeguard stands, vehicle barriers less than 30 inches in height, signs, water fountains, picnic tables, and other minor amenities within public parks;
- (8)      Planters, barbecues, benches, and other structures built in place, which are no higher than 42 inches and which altogether occupy no more than 20 square feet of the shoreline area, and when

combined with other structures within in the shoreline setback shall occupy no more than ten percent of the area between the shoreline and the shoreline setback line;

- (9) Liquid fuel-fired torches no more than eight feet in height without underground fuel conduits;
- (10) Roof overhangs which extend no more than 30 inches into the shoreline area with less than a 30-inch vertical thickness;
- (11) Minor structures and activities which are necessary for or ancillary to continuation, but not expansion, of existing agriculture or aquaculture;
- (12) Embankment of natural beach sand which is of the same color and grain size as exists along the beach area, and including the dewatering of sand for the purpose of beach replenishment projects;
- (13) Temporary emergency stabilization of an eroding shoreline with sandbags; and
- (14) Civil defense warning or signal devices and sirens.

- (c) Minor structures shall specifically exclude roofed structures, swimming pools, and facilities related to wastewater treatment or disposal.

[Eff: 6/13/1994; am: 5/17/1998; am: 1/16/2012] (Auth: ROH §23-1.5)  
(Imp: ROH §23-1.5)

§15-2 Director's approval required. (a) Approval by the director is required for all minor structures and activities, except for items (2), (3), (4), (5), (7), and 14 of §15-1(b).

- (b) The director may grant approval for a minor structure or activity provided that:

- (1) The applicant agrees in writing to remove the structure at his own cost if the director or other governmental agency having jurisdiction determines that, due to beach erosion or other cause, the structure may affect beach processes or public access or has become located seaward of the shoreline.
- (2) The applicant agrees to such other conditions as the director may impose, relating to the purpose of these regulations.

[Eff: 6/13/1994; am: 5/17/1998; am: 1/16/2012] (Auth: ROH §23-1.5)  
(Imp: ROH §23-1.5)

§15-3      Application requirements. Applications for approval of minor structures and activities shall contain:

- (1)      A plot plan drawn to scale showing the location of the proposed activity or structure relative to the certified shoreline and the lot boundaries;
- (2)      Plans and elevations of the proposed structure drawn to scale;
- (3)      A completed master application form;
- (4)      Agreement to remove the structure, pursuant to §15-2(b), signed by the applicant; and
- (5)      A certified shoreline survey.

[Eff: 6/13/1994; am: 5/17/1998] (Auth: ROH §23-1.5, HRS §91-2)  
(Imp: ROH §23-1.5, HRS §91-2)

§15-4 Contested case hearing. Any person who is specially, personally, and adversely affected by an action by the director on a minor shoreline structure permit may appeal the action of the director through a contested case hearing pursuant to §§91-9, 91-10, 91-11, 91-12 and 91-13, Hawaii Revised Statutes, and as provided in Chapter 12. The petitioner and the department may in every case appear as parties to the proposed action. A complete written petition, as enumerated in §12-2, appealing an action of the director on a variance application, must be received at the department within 30 days of the date of mailing or personal service of the director's written decision and order. If the appeal is incomplete or not timely filed, it may be dismissed by the director.

[Eff: 1/16/2012] (HRS §91-2) (Imp: HRS §91-2)

## CHAPTER 16

### NONCONFORMING STRUCTURES

#### §16-1 Repair and replacement

§16-1 Repair and replacement. (a) Any nonconforming structure may be repaired upon compliance with applicable state and county requirements within the shoreline area; provided that no such nonconforming structure shall be substantially enlarged or altered to increase its nonconformity.

(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 not be reconstructed except in conformity with Chapter 23, Revised Ordinances of Honolulu, and these rules.

(c) If a nonconforming structure is moved, it shall conform to the provisions of Chapter 23, Revised Ordinances of Honolulu, and these rules.

[Eff: 6/13/1994] (Auth: ROH §23-1.6) (Imp: ROH §23-1.6)

## CHAPTER 17

### SHORELINE SETBACK VARIANCES

§17-1	Applicability
§17-2	Application requirements
§17-3	Compliance with Chapter 343, Hawaii Revised Statutes
§17-4	Application processing
§17-5	Public hearing
§17-6	Decision
§17-7	Reapplication
§17-8	Reconsideration
§17-9	[Intervention
§17-10]	Contested case hearing

§17-1      Applicability. A Shoreline setback variance is required for all structures and activities within the shoreline setback, except as provided under Chapter 15 of these rules.

[Eff: 6/13/1994] (Auth: ROH §23-1.10, HRS §91-2) (Imp: ROH §23-1.10, HRS §91-2)

§17-2      Application requirements. (a) A person seeking a variance from any provision of the shoreline setback ordinance or these rules may discuss the matter informally with the director or his authorized representative prior to filing an application.

(b) The application shall include the following:

- (1) A completed master application form;
- (2) A certified shoreline survey map, except as otherwise provided by §13-5;
- (3) Fully dimensioned plans and drawings drawn to a practical scale of proposed and existing structures or activities, including their location on the certified shoreline survey map if it is required;
- (4) Color photographs showing the existing conditions and marked to show the location of the proposed structures and activities;
- (5) A written description of the materials to be used and the purpose, timing, and valuation of proposed structures and activities within the shoreline area;
- (6) If a shoreline protective structure is proposed to fix the shoreline, an evaluation of the design of the structure by a registered professional structural engineer, and a discussion of practicable alternatives to the proposed structures and activities;

- (7) If the applicant claims that the footing or toe of a structure proposed to fix the shoreline will be anchored on rock, soil borings or other conclusive evidence of the depth to rock beneath a sedimentary shoreline;
  - (8) A completed environmental assessment and finding of no significant impact or environmental impact statement and acceptance report filed by the director pursuant to Chapter 343, Hawaii Revised Statutes, if applicable; and
  - (9) The required application fee, except that this fee may be waived for public agency projects.
- (c) The director shall notify the applicant in writing whether the application is complete or incomplete. If the director determines that an application is incomplete, then the director's notice shall inform the applicant of the specific information or requirements necessary to complete the application.

[Eff: 6/13/1994; am: 5/17/1998; am: 1/16/2012] (Auth: HRS §91-2) (Imp: HRS §91-2)

§17-3 Compliance with Chapter 343, Hawaii Revised Statutes. (a) The director shall determine the applicability of the State of Hawaii Environmental Impact Statement (EIS) law which may require the applicant to submit an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes, and Chapter 200 Title 11, Administrative Rules of the State of Hawaii Department of Health.

- (b) The director shall further determine whether a finding of no significant impact is sufficient to process an application, or whether an environmental impact statement shall be required, pursuant to Chapter 343, Hawaii Revised Statutes, and Chapter 200 of Title 11, Administrative Rules of the State of Hawaii Department of Health.
- (c) The director shall, if requiring the applicant to prepare an environmental assessment, issue a finding of no significant impact, or if applicable, require an environmental impact statement with an application within the shoreline area for any of the following:
  - (1) Shore protection structures;
  - (2) Other structures and activities.

[Eff: 6/13/1994; am: 5/17/1998] (Auth: HRS §§91-2, HRS 343-5) (Imp: HRS §§91-2, 343-5)

§17-4 Application processing. (a) Upon satisfaction of Chapter 343, Hawaii Revised Statutes requirements and submittal of required application material, the director shall accept the application for processing and:



- (1) Give notice of the application to the property owners within a 300-foot radius of the project site, to the affected neighborhood boards and community associations and to other persons who have requested notice;
  - (2) Schedule a public hearing within 45 days of acceptance of the application, unless the hearing has been waived as provided by §17-5.
- (b) The director shall act on the application within 45 days of the close of the public hearing, unless the public hearing has been waived, in which case the director shall act within 45 days of the date on which the public notice of the application was published.
- (c) When simultaneously processing a variance application and a special management area use permit application, the director shall:
- (1) provide notice of both applications;
  - (2) hold a public hearing on both applications; and
  - (3) transmit proposed findings and recommendations on both applications to the city council within the period set by ordinance.
- [Eff: 6/13/1994; am: 5/17/1998] (Auth: HRS §91-2) (Imp: HRS §91-2)

§17-5 Public hearing. (a) The director shall hold a public hearing on each 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.
- (b) The director shall notify all property owners within a 300-foot radius of the project site of the decision to waive the public hearing. If, within 25 days of this notification any property owner requests that a public hearing be held, the director shall schedule a public hearing.
- (c) At least 20 days prior to the public hearing, the director shall publish notice of the public hearing in a newspaper of general circulation in the city. The director shall also notify the applicant, any person or agency that

requested the public hearing, all property owners within a 300-foot radius of the project site, and any other person(s) who requested notice at least 20 days before the public hearing.

- (d) The public hearing shall be conducted as provided by Part 1 Rules of Practice and Procedure, §5-2 through §5-4.

[Eff: 6/13/1994; am: 5/17/1998] (Auth: ROH §23-1-11, HRS §91-2)

(Imp: ROH §23-1.11, HRS §91-2)

§17-6 Decision. A variance application shall either be denied, approved, or approved with conditions. A decision and order on a variance application shall be based on and attached to written findings of fact and conclusions of law. If a variance is approved, then the decision and order shall state the terms of the variance and the deadline for compliance with conditions on the variance. The director shall provide a copy of the findings of facts, conclusions of law, and decision and order to the applicant and all persons who requested a copy.

[Eff: 6/13/1994] (Auth: ROH §23-1.10) (Imp: ROH §23-1.10)

§17-7 Reapplication. When an application has been denied or withdrawn, the director shall not accept an application that is substantially the same on the same property until:

- (1) All violations for which the application requests a variance have been corrected; and
- (2) 365 days have elapsed from the last date the application was withdrawn or denied.

[Eff: 6/13/1994] (Auth: HRS §91-2) (Imp: HRS §91-2)

§17-8 Reconsideration. The director may reconsider and subsequently rescind a previous decision and issue a new decision, as provided by Part 1 Rules of Practice and Procedure, Chapter 4.

[Eff: 6/13/1994] (Auth: HRS §91-2, RCH §4-105) (Imp: HRS §91-2, RCH §4-105)

§17-9 Contested case hearing. Any person who is specially, personally, and adversely affected by an action by the director on a shoreline setback variance may appeal the action of the director through a contested case hearing pursuant to §§91-9, 91-10, 91-11, 91-12 and 91-13, Hawaii Revised Statutes, and as provided in Chapter 12. The petitioner and the department may in every case appear as parties to the proposed action. A complete written petition, as enumerated in §12-2, appealing an action of the director on a variance application, must be received at the department within 30 days of the date of mailing or personal service of the director's written decision and order. If the appeal is incomplete or not timely filed, it may be dismissed by the director.

[Eff: 5/17/1998; ren §17-9; am: 1/16/2012] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

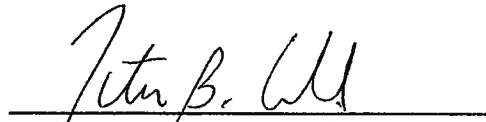
Chapters 11, 12, 13, 14, 15, and 17 of the Department of Planning and Permitting Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area were amended following a public hearing held on November 1, 2011, notice of which was published in the Honolulu Star-Advertiser on September 26, 2011.

These rules shall take effect ten (10) days following the date filed with the City Clerk.



DAVID K. TANOUE  
Director  
Department of Planning and Permitting

APPROVED:



PETER B. CARLISLE  
Mayor  
City and County of Honolulu

Dated: December 30, 2011

APPROVED AS TO FORM  
AND LEGALITY:

Honolulu

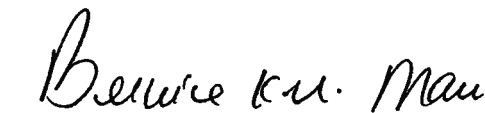


Deputy Corporation Counsel

FILED:

Given unto my hand and affixed with  
the Seal of the City and County of

this 6th day of January  
2012.



BERNICE K.N. MAU  
City Clerk