MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JACKY TAKAKURA
Deputy Director

DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

December 13, 2022

MEMORANDUM

TO: MS. P. DENISE LA COSTA, Chair
and Members of the Maui Planning Commission

FROM: MICHELE CHOUTEAU MCLEAN, AICP, Planning Director

SUBJECT: **SUMMARY OF THE COMMISSION'S DISCUSSIONS FROM THE DECEMBER 6, 2022 MEETING**

On December 6, 2022, at a meeting recessed from November 22, 2022, the Maui Planning Commission (Commission) discussed several minor edits to the proposed amendments to the Commission's Special Management Area (SMA) and Shoreline Rules. These are listed below to facilitate the Commission's discussion on its reconvened December 13, 2022 meeting. References are to the version of the rule amendments that were linked to the December 6, 2022 agenda:

1. **Correct typographical errors** in both sets of rules.

2. **Clarification to the SMA Rules** to add "Single family dwellings may be exempt after filing an assessment pursuant to Section 12-202-12" at the end of the "no-needs" in Section 12-202-11.5 (page 202-12).

3. **Add a new criterion for fines in both sets of Rules** by adding "(H) Whether the owner or violator has financially benefitted from the unpermitted use, activity or structure" to Section 12-202-23(d)(2) of the SMA Rules (page 202-32) and Section 12-203-16(d)(2) of the Shoreline Rules (page 203-28).

4. **Clarify the appeals process in both sets of Rules** by adding "Appeals of violations shall be processed pursuant to Subchapter 8 of the Commission's Rules of Practice and Procedure" at the end of Section 12-202-23, relating to Appeals, and the beginning of Section 12-202-26(a), relating to Enforcement, in the SMA Rules (pages 12-202-31 and 34), and at the end of Section 12-203-16, relating to Appeals, and the beginning of Section 12-203-18(a), relating to Enforcement, of the Shoreline Rules (page 12-203-28).

5. **Amend the definition of "minor structure" in the Shoreline Rules** by clarifying example (6) to read "temporary tents for special events conducted by commercial or non-profit entities not exceeding fourteen consecutive days...." and by deleting "fence" from the list of structures that could not be considered minor, so that fences can be considered minor structures (page 12-203-7).

PLUS: The Department was remiss in not making a recommendation to amend the "no need" in Section 12-202-11.5(c), to specify that the categorical exemption can apply to "Bed and Breakfast Homes or Short-Term Rental Homes as defined by Title 19" because the Department has never

PLUS: The Commission concluded the December 6, 2022 meeting with a discussion of Sections 12-203-12(a)(5), (6) and (7) of the Shoreline Rules. Below is the language that was last considered and that may be the subject of continued discussion with Corporation Counsel:

(5-6-7) Repairs, renovation or nonstructural improvements to a lawful nonconforming structure, beyond those allowed pursuant to sections 12-203-10, provided that:

(A) The structure was not damaged by chronic coastal hazards, including marine flooding, erosion, sea level rise, or undercutting or sink holes generated by sea level rise or wave action, king tides and storm surges;

(B) The repairs, renovations or nonstructural improvements have a valuation of less than 10 percent in any two-year period;

(C) Repairs shall be commensurate with the damage, and not enlarge or expand the structure, nor intensify the structure's use, in a way that increases its nonconformity;

(D) Repairs shall also be permitted by the building code, flood hazard regulations, and special management area rules;

(E) Repairs due to damage shall be started within two-years from the date of the damage, and before construction can commence, be accompanied by a plan for mitigation to protect from subsequent similar damage, if applicable, approved by the department;

(F) Repairs shall have the same or a smaller footprint, shall be in the same location or be located mauka, or be in an area less vulnerable to coastal hazards; alternatively, the repairs shall be conforming; and

(G) This subsection shall not apply to critical public infrastructure such as waterlines, wastewater lines, drainage systems, and roadways where it is demonstrated that repairs are necessary to system functionality and relocation or retreat is not immediately viable as determined by the director.

If the Commission adopts the proposed rules, the Department requests that it be allowed to correct typographical and grammatical errors, and re-order the "no needs" in Section 12-202-11.5 of the SMA Rules and 12-203-10 of the Shoreline Rules so that the order is the same.

MCM:atw

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