

DEPARTMENT OF PLANNING

COUNTY OF MAUI

ADOPTION OF CHAPTER 403
SHORELINE SETBACK RULES AND REGULATIONS
FOR THE LANAI PLANNING COMMISSION

SUMMARY

Chapter 403, entitled "Shoreline Setback Rules and Regulations for the Lanai Planning Commission", is adopted.

"TITLE MC-12"
DEPARTMENT OF PLANNING
SUBTITLE 02
LANAI PLANNING COMMISSION
CHAPTER 403
SHORELINE SETBACK RULES AND REGULATIONS
FOR THE LANAI PLANNING COMMISSION

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SUBCHAPTER 1

GENERAL PROVISIONS

§12-403-1 Title. The rules in this chapter shall be known as the "Shoreline Setback Rules and Regulations for the Lanai Planning Commission". [Eff 01/01/96]

§12-403-2 Authority. The rules contained in this chapter are hereby established pursuant to part III of chapter 205A, HRS, as amended. [Eff 01/01/96] (Auth: HRS §205A-43, 43.5, 45, 49) (Imp: HRS §§205A-43, 43.5, 45; Maui County Charter, Chapter 8)

§12-403-3 Purpose. One of the most important natural resources of the Island of Lanai, County of Maui is its shoreline area. Due to increasing demands for utilization of the beach and ocean resources, it is imperative that use and enjoyment of the shoreline area be insured for the public to the fullest extent possible; that the natural shoreline environment be preserved; that man-made features in the shoreline area be limited to features compatible with the shoreline area; and that the natural shoreline processes be protected from development.

These steps are necessary because development and other man-made improvements have resulted in encroachment of structures near the shoreline and, in numerous instances, erosion and other disturbances being caused by natural shoreline processes. Moreover, these steps are also necessary because the Hawaiian Islands are subject to tsunamis and high wave action that pose hazards to residential dwellings and other structures near the shoreline. Consequently, the purpose of this chapter is to establish shoreline areas and rules, within which the uses and activities of land within the shoreline area are regulated in order to protect the health, safety, and welfare of the public and to meet the intent of the coastal zone management program. [Eff 01/01/96] (Auth: HRS §205A) (Imp: HRS §§205A-2, 41, 42, 43, 49)

§12-403-4 Applicability. These rules shall be applicable to all lands which abut the shoreline or all lands which abut a beach reserve of the island of Lanai, County of Maui, State of Hawaii. [Eff 01/01/96] (Auth: HRS §205A; Maui County Charter, Chapter 8) (Imp: HRS §§205A-45, 49)

§12-403-5 Definitions. For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Activity" means any activity, use, development, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land and any purpose for which a structure or a tract of land is designed, arranged, intended, maintained, or occupied.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three.

"Buildable area" means the area of a lot remaining after the minimum yard setbacks have been met.

"Board approval" means approval of the board of land and natural resources pursuant to section 183C, HRS.

"Commission" means the Lanai planning commission.

"Commercial ocean recreation" means any business (1) engaging in an activity or use that is primarily conducted in or on the ocean, or in the shoreline area, which includes, but is not limited to, kayaking, snorkeling, scuba diving, surfing, windsurfing, beach volleyball, charters or tour operations, food service operations, and other sales and service; and, (2) providing instruction or guidance to any patron regarding the use of equipment associated with the ocean recreational activity.

"Department" means the department of planning of the County of Maui.

"Director" means the director or the department of planning of the county of Maui.

"HRS" means the Hawaii Revised Statutes of the State of Hawaii.

"Lot" means a designated parcel, tract, or area of land established by subdivision or as otherwise established prior to the adoption of subdivision laws, to be used, developed, or built upon as a unit.

"Minor activity" means an activity that does not alter the existing grade of the setback area and shall be limited to landscaping and minor clearing (grubbing) of vegetation, and noncommercial recreational activity.

"Minor structure" means a man-made structure costing less than \$20,000 which does not impede the natural movement of the shoreline, shall not alter the existing grade of the setback area and shall be limited to landscaping; landscape features (i.e., benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, etc.); walkways for access; sprinkler or irrigation systems; and outdoor shower and water faucets.

"Nonconforming structure" means a structure which was lawfully existing within the shoreline area and which:

(a) Was completely built prior to June 22, 1970; or

(b) Received either a building permit, board approval, or shoreline area variance prior to June 16, 1989.

"Plan" means a detailed construction plan drawn to scale which shows the design of a structure proposed to be built within the shoreline area. The plan shall consist of data which include, but which are not limited to: property boundaries; natural features such as large trees, rock outcroppings; topography in and around the proposed construction; and any other information which

identifies the existing condition of the subject parcel of land. The director may require that the plan include an accurate instrument survey of the lot as well as cross sections of the lot at designated locations to be prepared by a surveyor licensed in the State of Hawaii.

"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, and which has been certified by the board of land and natural resources within the preceding twelve months.

"Shoreline area" shall include all of the land area between the shoreline and the shoreline setback line provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this part extends seaward of the shoreline, then the term "shoreline area" shall include the entire structure.

"Shoreline processes" mean the natural flow of the ocean which affect the movement of the shoreline area or lands bordering the ocean, including submerged lands.

"Shoreline setback line" means that line established by this chapter running inland from the shoreline at a horizontal plane.

"Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, revetment, or landscaping. [Eff 01/01/96] (Auth: HRS §§205A-5, 43.5) (Imp: HRS §205A-41)

§12-403-6 to 9 (Reserved)

SUBCHAPTER 2

ESTABLISHMENT OF SHORELINE SETBACK LINES

§12-403-10 Establishment of shoreline setback lines. (a) Except as otherwise provided in this section, all lots shall have a shoreline setback line of forty feet from the shoreline.

(b) Exceptions:

- (1) A lot which was created prior to June 16, 1989 with an average lot depth of one hundred feet or less shall have a shoreline setback line twenty-five feet from the shoreline;
- (2) A lot which was created prior to June 16, 1989 with an average lot depth of more than one hundred feet but less than one hundred sixty feet shall have a shoreline setback line forty feet from the shoreline;
- (3) A lot with an average lot depth of one hundred sixty feet or more shall have a shoreline setback line either at one hundred fifty feet from the shoreline or at the distance

from the shoreline calculated by multiplying the average lot depth of the lot by .25, whichever is the least distance from the shoreline but not less than forty feet from the shoreline; and

(c) Prior to commencement of grubbing, grading, or construction activities, the shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii.

(d) The commission or the department shall establish a greater setback from the shoreline if it finds at the time of special management area use permit review that the additional setback is necessary to satisfy the objectives and policies of the special management area set forth in chapter 402, "Rules and Regulations of the special management area for the Lanai Planning Commission". The provisions of this rule shall not apply to areas established prior to the effective date of these rules, by the Maui planning commission and/or the department beyond the minimum twenty-five or forty foot setback requirements. [Eff 01/01/96] (Auth: HRS §§205A-42, 43, 45) (Imp: HRS §§42, 43, 45)

§12-403-11 to 12 (Reserved)

SUBCHAPTER 3

PROCEDURES

§12-403-13 Determination of the shoreline. (a) The shoreline shall be established and certified in accordance with the procedures prescribed by the board of land and natural resources; provided that:

(1) No determination of a shoreline shall be valid for a period longer than twelve months except for those portions of the shoreline which are fixed by man-made structures, which have been approved by appropriate government agencies, and for which engineering drawings exist to locate the interface between the shoreline and the structures in which case the shoreline certification shall be valid so long as the artificial structure remains intact and unaltered. Upon written request accompanied by a statement by the applicant that the artificial structure remains intact and unaltered since the shoreline was last certified, the chairperson of the board of land and natural resources may confirm the validity of the certified shoreline pursuant to the board's rules. However, upon inspection of the property, if there are indications that the shoreline may have changed due to erosion or accretion of the property, the director may require another certification of the shoreline; or

(2) If the shoreline certification is less than twelve months but upon inspection of the property, there are indications

that the shoreline may have changed due to erosion or accretion of the property, the director shall require another certification of the shoreline.

(b) For the purpose of establishing shoreline setback line, the director may, in consultation with the department of land and natural resources, require the certified shoreline survey to extend laterally beyond the affected property's shoreline frontage boundary in cases where the inland reaches of an adjacent property's frontage affects the determination of the shoreline setback area.

(c) The director may waive the certification requirement in cases where there may be special or unusual physical circumstances or conditions of the land, or where a structure or activity is proposed at a considerable distance inland, or where the lot does not abut the shoreline. Setback lines shall be conservatively, but reasonably established. The director may require a survey map of the subject area depicting physical and geographical conditions to assist in making a determination.

[Eff 01/01/96] (Auth: HRS §§205A-42, 45; HAR §13-222) (Imp: HRS §§205A-42, 43, 44, 45, 46)

§12-403-14 Site plans. Unless otherwise required by the director, all site plans showing the location of the shoreline and shoreline setback line of a lot shall: be drawn to the scale of 1"=20'0"; show the shoreline and existing conditions along properties immediately adjacent to the subject lot; show contours at a minimum interval of two feet; and show all natural and man-made features in the subject area. [Eff 01/01/96] (Auth: HRS §205A-43) (Imp: HRS §§205A-42, 43)

§12-403-15 Activities and structures subject to these rules. All activities and structures located or proposed to be located within the shoreline area shall conform to the requirements of this chapter. The requirements of this chapter shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law including but not limited to chapter 19.62, flood hazard areas, and chapter 402, special management area rules and regulations for the Lanai planning commission. Construction immediately inland of the shoreline area shall also be subject to these rules until a certified and confirmed survey map, prepared in accordance with the provisions of Section 12-403-13 herein, is filed with the department. [Eff 01/01/96] (Auth: HRS §§205A-5, 43, 43.5, 45, 46, 48) (Imp: HRS §§205A-43.5, 44, 46)

§12-403-16 Prohibited activities and exceptions within the shoreline area. (a) The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited.

(b) No deposit of sand, soil, rocks, refuse or other similar materials, nor the placing of plants, trees, or other landscape

features shall be permitted.

(c) Exceptions:

- (1) The taking from the shoreline area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use, provided that removal for domestic, noncommercial use shall not be made in any manner or to an extent that will change the basic topography or the physical appearance and configuration of the area; or
- (2) Where the mining or taking is authorized by a variance pursuant to these rules;
- (3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under Section 46-11.5, HRS; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or
- (4) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing for purposes under Section 46-12, HRS; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity. [Eff 01/01/96] (Auth: HRS §205A-44) (Imp: HRS §205A-44)

§12-403-17 Prohibited structures or activities and exceptions within the shoreline area. Structures and activities are prohibited in the shoreline area without a variance pursuant to this part with the exception of the following and with written approval by the director:

(a) A structure or activity in the shoreline area shall not need a variance if:

- (1) It was completed prior to June 22, 1970;
- (2) It received either a building permit, board approval, or shoreline area variance prior to June 16, 1989;
- (3) It was outside the shoreline area when it received either a building permit or board approval; or
- (4) It is necessary for or ancillary to continuation of agriculture or aquaculture existing in the shoreline area on June 16, 1989;
- (5) It is determined by the director to be a minor structure or activity and which does not affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline and which meets the purposes of this chapter as specified in §12-403-3 and the coastal zone management act as adopted in chapter 205A, HRS, as amended and the requirements of the coastal high hazard district of chapter 19.62.090 of the Maui county code;
- (6) Work being done consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational

- facilities, which are publicly owned, and which result in no interference with natural processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline area without a variance; or
- (7) It is a structure which has been legally permitted and which is the subject of repairs valued at less than fifty percent of the current assessed value of the structure, which do not enlarge the structure nor intensify the use of the structure.

(b) Except that, notwithstanding any provision of this chapter to the contrary, no minor structures or activities, except public access walkways, landscape planting and irrigation, and noncommercial ocean recreation activities shall be permitted within a twenty-five-foot setback from the shoreline for a lot with an average lot depth of one hundred feet or less or within a forty-foot setback from the shoreline for a lot with an average lot depth which is more than one hundred feet. Provided that the landscape features or irrigation shall be directed away from the shoreline and no landscape planting shall encroach seaward of the setback line. Provided further, that all minor structures or activities may be permitted within the setback area beyond the twenty-five foot setback from the shoreline for a lot with an average lot depth of one hundred feet or less or beyond the forty-foot setback from the shoreline for a lot with an average lot depth which is more than one hundred feet.

(c) A request for a minor structure or activity determination shall be submitted to the department on a shoreline setback approval form prescribed by the director and shall be accompanied by applicable information to assist in the determination, which could include but not be limited to a certified shoreline survey, construction plans, a list of proposed plants and their growth at maturation, existing and finished contours, photographs of the shoreline setback area, an environmental assessment, written reasons addressing the criteria set forth in this section.

(d) Minor structures or activities shall be completed or operating within one year from the date of the department's determination or from the approval date of the last discretionary permit, whichever is last. [Eff 01/01/96] (Auth: HRS §205A-44) (Imp: HRS §§205A-44, 46)

§12-403-18 Variance application. (a) A written application for a variance shall be made in a form prescribed by the director and shall be filed with the director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the director to be necessary to evaluate the application. The application shall also include:

- (1) A public hearing and notice fee as established in the County budget; provided that, the filing fee may be waived by the director for County public agencies;
- (2) Certification from the owner or lessee of the lot which authorizes the application for variance;

- (3) An environmental assessment consistent with chapter 343, HRS, as amended, and the environmental impact statement rules of the state of Hawaii, which may include, but not be limited to flood hazard engineering studies of subject property and project's impact analysis on adjacent properties, an archaeological survey, floral and faunal surveys, photographs, existing and proposed contours; and
 - (4) The names, addresses and the tax map key identification of owners of real property situate adjacent to and abutting the boundaries of the land on which the proposed use, activity or operation is to occur; and
 - (5) A site plan of the shoreline setback area, drawn to scale, showing:
 - (A) Existing natural and man-made features and conditions within the shoreline setback area;
 - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
 - (C) The certified shoreline and the shoreline setback line;
 - (D) Contours at a minimum interval of five feet unless waived by the department; and
 - (E) Proposed development and improvements showing new conditions.
 - (6) A copy of the certified shoreline survey map of the property as set forth in section 12-403-13;
 - (7) Detailed justification of the proposed project, which addresses the criteria and conditions set forth in section 12-403-19; and
 - (8) Any other information required by the director.
- (b) Upon a determination by the director that an application is complete and in compliance with part III of chapter 205A, HRS, chapter 343, HRS, as amended, and this chapter, the director shall submit the application to the commission. The director shall submit a written report, a copy of the application, and all other documents submitted on the application to the commission prior to the matter appearing on an agenda of the commission. If the application is determined to be incomplete by the director, the director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete.
- (c) Work proposed within the shoreline setback area will trigger chapter 343, HRS, as amended, relating to environmental impact statements. The department, on behalf of the commission, is hereby authorized to serve as the "agency" responsible for complying with the environmental impact statement (EIS) rules.
- (d) Public hearing.
 - (1) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters in accordance with

- the rules of practice and procedure of the commission and as a special management area use permit procedures, section 12-402-16 of chapter 402, special management area rules and regulations for the Lanai planning commission;
- (2) The commission shall conduct a public hearing within 90 days from compliance with EIS rules or within a longer period as may be agreed to by the applicant. In the case of negative declarations and final environmental impact statements, the final day of the 30-day appeal period of the office of environmental quality will be used as compliance. For exemptions, the date of determination will be used.
- (e) Exceptions and waiver.
- (1) The commission hereby delegates to the department the authority to waive a public hearing and to take action on the application for:
- (A) Stabilization of the shoreline erosion by the moving sand where the public facilities may be in imminent danger and substantial harm would result from the delay in filing a request;
- (B) Temporary protection of a structure determined by the department to be legally constructed, which cost more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion as determined by the department, in consultation with other appropriate agencies (i.e., department of land and natural resources, U.S. army corps of engineers, department of public works and waste management); or
- (C) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or water sports recreational facilities, which result in little or no interference with the natural shoreline processes.
- (2) An applicant who seeks processing under section 12-403-18(e)(1) shall make the request in writing upon submittal of the variance application or upon verbal request as provided in section 12-402-16, special management area emergency permit procedures, of the special management area rules and regulations for the Lanai planning commission.
- (3) The department may deny the public hearing waiver and the application shall be heard and noticed by the commission in accordance with the requirements of this section. [Eff 01/01/96] (Auth: HRS §§205A-43.5, 46; HRS §343-5) (Imp: HRS §§205A-43, 43.5, 46)

§12-403-19 Criteria for approval of a variance. (a) A shoreline area variance may be granted for a structure or activity otherwise prohibited by this chapter, if the commission finds in writing, based on the record presented, that the proposed structure

or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;
- (5) Boating, maritime, or water sports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under Chapter 269, HRS;
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that, the commission also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area, and the commission imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or
- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that commission also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of the public beach, and will be necessary to stabilize an eroding shoreline.

(b) For the purposes of this section, hardship shall not include economic hardship to the applicant; county zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; or as a result of any other permit or approval which may have been issued by the commission. If the hardship is a result of actions by the applicant, such result shall not be considered a hardship for the purpose of this section.

(c) No variance shall be granted unless appropriate conditions are imposed:

- (1) To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
- (2) To minimize risk of adverse impacts on beach processes;
- (3) To minimize risk of structures failing and becoming loose rocks or rubble on public property;
- (4) To minimize adverse impacts on public views to, from, and along the shoreline; and
- (5) To comply with chapters 19.62 and 20.08 of the Maui

county code relating to flood hazard districts and erosion and sedimentation control respectively.

(d) Amendments to a variance. The applicant may apply to the department for an amendment to the variance in accordance to the requirements of section 12-402-17 of chapter 402, special management area rules and regulations of the Lanai planning commission. [Eff 01/01/96] (Auth: HRS §§205A-46; HRS §343) (Imp: HRS §205A-46)

§12-403-20 Enforcement. (a) The director of public works and waste management shall enforce these rules and regulations, except as otherwise provided herein.

(b) Any structure or activity prohibited by §12-403-17 of this chapter, that has not received a variance pursuant to this part or complied with conditions on a variance, shall be removed or corrected. No other state or county permit or approval shall be construed as a variance pursuant to this part.

(c) Where the shoreline is affected by a manmade structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then for purposes of enforcement of this part, the structure shall be construed to be entirely within the shoreline area and shall be removed or corrected.

(d) Issuance of notice of violation and order.

(1) The landowner and/or the alleged violator shall be notified by the land use and codes administration division of the department of public works and waste management by certified or registered mail of an alleged violation of this rule, any permit issued pursuant thereto, or any condition of a shoreline setback variance. The notice of violation and order shall include, but not be limited to, the specific section of this rule which has been violated; the nature of the violation; and the remedy(ies) available. The notice of violation and order may also require that the violative activity cease and desist; that a civil fine be paid not to exceed \$10,000 per violation; and that a civil fine be paid not to exceed \$1,000 per day for each day in which the violation persists.

(2) The notice of violation and order shall advise person(s) that the order shall become final thirty days after the date of its mailing, unless written request for a negotiated settlement or a hearing is mailed or delivered to the land use and codes division within said thirty days.

(3) If the violator seeks a negotiated settlement with the land use and codes administration, but waives the right to a hearing, the land use and codes administration, in consultation with the department and the corporation counsel, shall be authorized to enter into a settlement agreement with the landowner or, if appropriate, the

violator, which will cure the violation, set the fine, and allow for inspection by the land use and codes administration and the department. The negotiated settlement shall be forwarded to the commission for approval.

- (4) A request for hearing shall be considered timely if a written request is delivered or mailed and postmark dated to the department within the said thirty days stated on the notice. Upon receipt of a request for a hearing, the department shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the director or his designee in accordance with the provisions of chapter 91, HRS, as amended.
- (5) The department, in consultation with the office of the corporation counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.
- (6) Nothing in this section shall prohibit the department, through the corporation counsel, from filing an order or motion directly with the court in the event that public health and safety may be at risk. [Eff 01/01/96] (Auth: HRS §205A-43, 43.6) (Imp: HRS §43.6)

§12-403-21 Conflicts with other laws. In case of a conflict between the requirements of any other state law or county ordinance regarding shoreline setback lines, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing contained in this part shall be construed to diminish the jurisdiction of the state department of transportation over wharves, airports, docks, piers, or other commercial harbors, and any other maritime facilities constructed by the state; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the county zoning laws, and found not to conflict with any county ordinances, zoning laws, and building codes. [Eff 01/01/96] (Auth: HRS §205A-48) (Imp: HRS §205A-48)

§12-403-22 Amendments to rules. Any amendments, modifications, or revisions to these rules shall be processed pursuant to chapter 401, rules of practice and procedure for the Lanai planning commission and chapter 91, HRS, as amended. [Eff. 01/01/96] (Auth: HRS Chapters 91, 92, and 205A-49) (Imp: HRS §91-3, §205A-42, 43, 43.5, 45)

§12-403-23 Penalties. Any person who violates any provision of these rules shall be liable for an initial civil fine not to exceed \$10,000 per violation and a maximum daily fine of \$1,000 until the violation is corrected. A civil fine may be imposed by the department after an opportunity for a hearing under chapter 91,

HRS, as amended, unless said hearing is otherwise waived. A variance application submitted subsequent to an applicant's having completed the structure or activity, or having been cited for the activity or construction without having obtained a variance, shall not stay any order to pay civil fines. [Eff 01/01/96] (Auth: HRS §205A-32) (Imp: HRS §§205A-22, 26, 28, 29, 30, 33)

§12-403-24 Appeals. (a) An administrative decision of the director for duties delegated to the director by the commission (i.e., the determination of minor structures and waivers/action on shoreline setback variance applications set forth in section 12-403-17 and determination of compliance with chapter 343 set forth in section 12-403-18(d)) shall be appealable to the commission in accordance to the following procedures:

- (1) An appeal from the decision of the director shall be filed within thirty calendar days after receipt of the decision.
- (2) The petition for an appeal of the director's decision shall be filed with the department and shall include the following:
 - (A) A nonrefundable fee and processing fee of \$250, or a sum greater if amended in the annual budget of the county of Maui;
 - (B) Name, address, and telephone number of the appellant and/or appellant's representative, if applicable;
 - (C) Description of the property involved in the appeal, including the tax map key number of the property;
 - (D) Appellant's interest in the property;
 - (E) A statement of the nature of the appeal and the relief requested. The statement shall specify how the decision appealed from:
 - i. Violates the law; or
 - ii. Is clearly erroneous in view of all information and issues considered at the time of the decision; or
 - iii. Was arbitrary and capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
- (3) Hearings. Upon proper filing of a petition for an appeal, the commission shall, within not more than ninety days, conduct a hearing, unless that period is waived by the appellant. Notice of the public hearing and its purpose shall be published in a newspaper of general circulation in the county at least ten calendar days prior to the date of the hearing. In addition and pursuant to the same notice period, the commission shall provide written notice to persons who had timely objections before the director's action. Promptly after the commission's fixing a date for the hearing, but not less than ten days prior to the date of the hearing, the

appellant shall mail a notice of the hearing to all property owners within 500 feet of the affected property. Prior to the date of hearing, the appellant shall file with the commission proof of service or of good faith efforts to serve notice of the hearing on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like. The appellant shall submit an additional \$250 publication fee for each hearing continued at the request of the appellant. The appellant shall also notify persons who had timely objections before the director's action of the continued hearing.

- (4) Where applicable, the commission may view the land or structure(s) involved in the appeal as a portion of the hearing.
- (5) The scope of review of an appeal shall generally be limited to information on the record at the time of the director's decision, provided that any relevant public testimony may be taken and provided further that, if the appellant seeks to provide new, relevant information, then the commission may either remand the application to the director for re-evaluation or, upon finding good cause, hear and consider the new information.
- (6) Within sixty days after the conclusion of the hearing, the commission shall either affirm or reverse the director's decision or, where applicable remand the application to the director.
- (7) All actions of the commission shall contain a statement and factual bases for its decision in accordance with the following criteria:
 - (A) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property; and
 - (B) There are no reasonable alternatives that would resolve the difficulty; and
 - (C) The variance shall be consistent with the general purpose of the district, the intent and purpose of this chapter, chapter 205A, HRS, as amended, the county general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.
- (8) A decision appealed from may be modified or reversed only if the commission finds that the decision is:
 - (A) In violation of the law; or
 - (B) Clearly erroneous in view of all information and issues considered at the time of the decision; or

- (C) Arbitrary and capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
- (9) If the commission fails to render a decision to affirm, modify or reverse the director's action within the prescribed period, the director's action shall be considered as having been affirmed.
- (10) If the commission affirms the director's decision, the appellant may appeal the decision to the board of variances and appeals.
- (b) All other appeals of the director's decision shall be made to the circuit court of the second circuit as provided for in chapter 91, HRS, as amended.
- (c) Appeal of the commission's decision shall be made in accordance to commission's rules of practice and procedure and chapter 91, HRS, as amended, as is appropriate. [Eff 01/01/96] (Auth: HRS Chapter 91, §205A-49) (Imp: HRS §205A-49)

§12-403-25 to 27 (Reserved)

§12-403-28 Severability. If any provision or part of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable." [Eff 01/01/96]


SUBCHAPTER 8

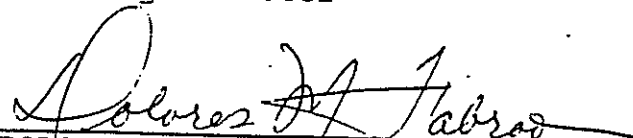
EFFECTIVE DATE

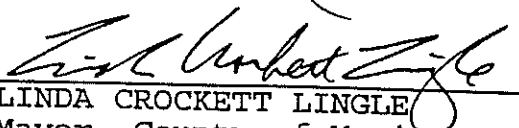
§12-403-29 Effective Date. These Rules shall take effect ten (10) calendar days after filing with the County Clerk. [Eff 01/01/96]

ADOPTED this 16th day of November, 1995, at
Wailuku, Maui, Hawaii.

DEPARTMENT OF PLANNING



DAVID W. BLANE
Planning Director


DOLORES M. FABRAO, Chair
Lanai Planning Commission



LINDA CROCKETT LINGLE
Mayor, County of Maui

Approved this 22nd day of
December, 1995

APPROVED AS TO FORM AND LEGALITY:


NELSON B. BEFITEL
Deputy Corporation Counsel
County of Maui rules/scbk3.lan

Received this 22nd day of
December, 1995.


DARYL T. YAMAMOTO
Clerk, County of Maui


CERTIFICATION

I, DAVID W. BLANE, Director of Planning, Department of Planning, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Rules Relating to Shoreline Setbacks for the Lanai Planning Commission, which were adopted by the Lanai Planning Commission on the 16th day of November, 1995, by affirmative vote of the proper majority, following a public hearing on November 16, 1995; and

2. That the notice of public hearing on the foregoing rules was published in the Maui News on the 16th day of October, 1995.

COUNTY OF MAUI



DAVID W. BLANE
Planning Director

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