

Proposed Updates to the Maui Planning Commission Shoreline Rules Responses to Frequent Comments and Questions

1. Comment:

The County is surprising owners with this new setback policy.

Response:

This is not a new policy; it is an update to the existing erosion-based setbacks. In 2003, Maui County established shoreline building setbacks based on erosion rates. At the time, Maui was the first county in the state to take this science-based planning approach, and other counties have since adopted or are considering similar policies. This policy has been successful in siting new development away from the shoreline for hazard protection and improved community and ecosystem resilience. However, the existing setback formula only considers historical erosion and does not factor in worsening conditions due to sea level rise (SLR). The 2017 State SLR Report¹ and Viewer² includes a model that projects future erosion due to sea level rise, so this is a tool for expanding setbacks to further responsibly manage known risks.

2. Comment:

What will happen to legally existing homes and structures that are now or would be partially or entirely in the setback area?

Response:

These become what is referred to as “non-conforming” structures. This is already a common situation under the existing setback Rules. These structures can be remodeled or repaired, but cannot expand their footprint within the setback area.

3. Comment:

How many properties would be affected by the proposed updated Erosion Hazard Line (EHL)?

Response:

For the West Maui and North Shore areas, the Planning Department estimates that over 700 parcels would be affected by the proposed updated EHL. The Department also estimates that over 500 of these West Maui and North Shore parcels are currently at least partially inside the present setbacks. The Department does not have similar data for the South Maui area. However the Department expects the impacts there would be

¹ See the 2017 “Hawaii Sea Level Rise Vulnerability and Adaptation Report” at https://climateadaptation.hawaii.gov/wp-content/uploads/2017/12/SLR-Report_Dec2017.pdf

² See www.hawaiisealevelriseviewer.org

comparable to either West Maui or the North Shore, leading to around 1,200 parcels affected island-wide by the proposed setbacks compared to around 800 under the present setbacks.

4. Comment:

Homeowners on the shoreline already comply with strict FEMA flood zone regulations.

Response:

FEMA maps are based on past flooding events and do not consider erosion and future conditions. Properties in some areas of the island, such as the North Shore, have high base flood elevation requirements due to historic tsunami inundation; however, properties in other regions may not have elevation requirements at all even though they are shoreline properties. Also, FEMA Rules are intended to strengthen structures in place, but do not address the long term, incremental process of moving structures outside of hazard zones for improved community resilience.

5. Comment:

This policy will result in a reduction of property values and associated tax revenue.

Response:

There are many non-conforming properties on the shoreline already under the existing Rules and setbacks. In the 16 years since the adoption of erosion-based setbacks in 2003, this has not resulted in declining shoreline property values. Further, reducing risks and coastal hazards impacts may increase property values.

6. Comment:

Retreat is not necessary if we use modern engineering solutions that allow us to enjoy life as we've known it for generations to come.

Response:

These strategies (shoreline setbacks, engineering options) are not mutually exclusive. Shoreline engineering options may still be important as an interim adaptation solution in some cases, although may not be feasible or desirable everywhere. There is an 80% probability that coastal erosion will reach the proposed Erosion Hazard Line with Sea Level Rise of 3.2 feet, which in turn is currently anticipated as early as 2060 or later this century. Eventually, even engineering solutions may not be able to withstand or keep pace with sea level rise.

7. Comment:

Property owners in the areas that are subject to projections of future erosion are being penalized. The policy should be the same for all owners.

Response:

These are the highest risk areas where erosion and coastal flooding are dominant. Other properties where coastal erosion is not mapped will be subject to a 200 foot setback, or the existing average lot depth based formula that requires a certified shoreline survey, to also minimize coastal hazard risks.

8. Comment:

If the proposed Rule updates are adopted and the setback is expanded, then the County should allow accessory structures such as pools, gazebos, and carports within the expanded shoreline setback.

Response:

The aim in the setback area is to allow only minor new structures that are not of a permanent nature and do not affect coastal processes and ecosystems. However, the proposed Rules would allow the types of accessory structures mentioned in the comment within an area 40 feet makai of the “minimum buildable depth” when a lot must use that provision to be buildable. The County can review what types of structures might be allowed.

9. Comment:

The State SLR Report and Viewer, upon which the proposed new erosion setbacks are based only consider one option – shoreline retreat. We shouldn’t just adopt an “abandon the shoreline” policy. The erosion model assumes that no engineering or adaptation measures will be undertaken, but what if they are?

Response:

Yes, it is correct that the erosion model used in the State SLR Report and Viewer does assume that no adaptation measures will be implemented. However, the setback policy does not preclude implementing various adaptation measures (elevation, shoreline restoration or remediation, etc). In fact, these are complementary strategies where mitigation and adaptation provide interim solutions while setbacks incrementally move new development away from the shoreline for improved community resilience. In a situation where engineering solutions may be proposed, an amendment to the shoreline setback line or a shoreline setback variance can be requested.

10. Comment:

If there is public shoreline restoration and improvement of our beaches there is no need to increase the size of the setback areas.

Response:

Although public shoreline restoration and improvements of our beaches may be achieved, they would most likely be in only some (maybe very limited) locations, we don't know what forms they would take or how long they would take, and for how long mauka structures might be protected. If, when and where protection from public shoreline restoration and improvement of our beaches occurs for a longer dependable time, the County might safely consider possible reductions of setbacks at that time.

11. Comment:

The County should reach out to coastal engineering firms to better understand engineering solutions and support the nourishment and rebuilding of our beaches wherever possible.

Response:

County Coastal Zone Management (CZM) staff work regularly with coastal engineers on many projects island-wide. The County understands the need for interim solutions to the existing challenges and impacts along the shoreline. In fact, the County has been integrally involved in developing beach restoration alternatives in Kahana and Napili in West Maui, and are engaged in other possible future restoration projects throughout the County. Engineers and land owners can also reach out to CZM planners with proposed solutions to discuss what is feasible given any particular site.

12. Comment:

How many properties would become unbuildable if the proposed EHL is adopted?

Response:

None, because the "minimum buildable depth" provision in the Rules already allows building; this depth is proposed to increase from 35 to 40 feet. For example, a lot that is 120 feet wide would currently be allowed to build a 7,000 square foot, two-story residence within the minimum buildable area; that is proposed to increase to 8,000 square feet.

The Planning Department analyzed properties in West Maui and the North Shore which would be affected by changes similar to the proposed change to the existing erosion setback formula. Under the proposed setbacks, approximately 12 of the 104 mainly undeveloped private properties would need to use the "minimum buildable depth" provisions in order to be able to develop.

13. Comment:

The proposed Rules update will constitute land takings.

Response:

There are provisions in the current Rules that ensure property owners can build on their property. These include a provision for minimum buildable depth and, for unusual circumstances, an opportunity to request an amendment to the Erosion Hazard Line. These will remain. Corporation Counsel determined in 2003 that these types of provisions would NOT lead to any takings, and none have been asserted in Court.

14. Comment:

Even with properties still being allowed to build with a minimum buildable depth, the reduction from the buildable area under current Rules will be so large as to be an unconstitutional “taking”.

Response:

Planners understand that courts interpreting the relevant law look for a very dramatic to severe, if not full, decrease in property value before determining there has been a regulatory taking. Minimum buildable depth provides ability for a landowner to build, at least, a single family residence, even if maybe smaller and more mauka than what might have been previously allowed. Such lots retain significant residential use and monetary worth given highly valued proximity to shoreline.

15. Comment:

Residents would not be allowed to maintain their residences in the event of a calamity.

Response:

There are provisions in the existing Rules for this situation, and these provisions are not proposed for any amendments that would increase restrictions; in fact, they are proposed to be more permissive in many cases.

16. Comment:

If a structure is destroyed, will the Rules allow it to be rebuilt? If a structure is damaged but not destroyed, what kinds of repairs can be done in the setback area?

Response:

Under both current and proposed Rules, if a lawful structure is completely destroyed by coastal hazards, it cannot be reconstructed. If a structure is damaged by coastal hazards and the repair’s value is 50% or less of the structure’s replacement cost, the structure can be repaired. If it is destroyed by other than coastal hazards, then it can be completely reconstructed.

17. Comment:

The “red line” representing projected erosion evokes an emotional reaction.

Response:

The current setback lines are not drawn on any map, so the benefit to both landowners and government officials of having a mapped line is ease of implementation, transparency, and creating awareness of the hazard exposure.

18. Comment:

Can the red Erosion Hazard Line in the SLR Viewer be laid onto a site plan?

Response:

Yes. Data in various geospatial formats can be downloaded for use with site plans. Visit <https://www.pacioos.hawaii.edu/shoreline/slr-hawaii/> and scroll down the page to access the data for all of the sea level rise models.

19. Comment:

Will people not be able to repair old, deteriorating seawalls?

Response:

Repairs could be permitted for lawful, nonconforming seawalls protecting a habitable structure or public infrastructure.

20. Comment:

Would allowing repairs to old, deteriorating seawalls be contrary to managed retreat?

Response:

Some aging and deteriorating seawalls may be repaired as interim measures while the complicated and longer-term processes toward managed retreat are occurring.

21. Comment:

Can the “Permitted structures and activities within the shoreline area” listed in Section 12-203-12 be done without a shoreline permit?

Response:

No. A “Shoreline Setback Approval” permit is required for everything listed in Section 12-203-12.

22. Comment:

Would carrying out plans for structures and activities within the shoreline area listed in Section 12-203-12 require an Environmental Assessment (EA)?

Response:

Sometimes. However, many smaller activities and structures are exempt from needing an EA.

23. Comment:

There is concern about the impact of the EHL on hotels, resorts, and oceanside condominiums, the employment and taxes associated with them, and their abilities to get financing and insurance.

Response:

In some areas, such as the North Beach area north of the original Kaanapali development, the hotels are sited mauka of the EHL, seemingly as a result of past setback policy. In older resort areas, hotels generally lie more makai, due likely to a combination of smaller setbacks at the time and continuing coastal erosion since they were built. Possible impacts from the EHL as mentioned in the comment would vary accordingly. A review of the locations of the EHL throughout Maui's resort areas finds that landowners in most areas with development makai of the line are already seriously discussing responses to erosion threats. And the EHL might be amended in locations where adequate coastal hazard mitigation is set in place.

It is critical to keep in mind that the impacts on resort areas result much more from the projected advance of the ocean than the proposed policies to set back development out of harm's way. Thus, although an EHL mauka of current development may or may not affect the ease of obtaining financing and insurance on particular at-risk properties, it would be more of a benchmark for lenders and insurers to help them set the various levels of risk they need to assess due the real threat: the actual advance of the ocean. In a larger perspective, by helping to keep new development out of harm's way, the EHL will lead to resort development and redevelopment which is more sustainable in the longer term, along with all the associated employment, taxes and other benefits.

24. Comment:

All owners of property makai of the new shoreline setbacks need to be sent a notice of the proposed Rules amendments.

Response:

The legally required procedure for amendments to administrative rules is governed by Hawaii Revised Statutes Chapter 91. It requires a public hearing with public notice given 30 or more days ahead of time. The mailing suggested could easily exceed 1,000 addressees.

When County actions such as this cover a large area, notice is given by newspaper publication and not by direct mailings.

25. Comment:

It is inappropriate to base new setbacks upon the models used in the State SLR Report and Viewer. The Report even included a disclaimer that read, in part “The data, maps, and recommendations provided should be used only as a screening-level resource to support management decisions to address sea level rise.”

Response:

The disclaimer in the Hawai'i Climate Change Mitigation and Adaptation Commission's original 2017 SLR Report was drawn from common language used throughout many government reports. After further consideration of possible appropriate uses of the Report and viewer the Commission replaced the original Disclaimer with the full, updated disclaimer below at its November 27, 2018 public meeting.

“Based on the methodology of sea level rise modeling used in this report and the Hawai'i Sea Level Rise Viewer, having gone through peer review and publication in the Nature Journal Scientific Reports, the results of this study are sufficiently validated to be appropriately used in land management decisions as the best available information as of the date of publication of the report, December 2017, consistent with the intent of Act 83 SLH 2014 as amended. This report is intended to provide a state-wide assessment of Hawaii's vulnerability to sea level rise. The location of projected impacts and economic costs from damages are estimates based on a particular sea level rise scenario. The hazard and vulnerability data and maps provided herein are based on observational data and computer-based models as described herein and in published research (Anderson et al., 2018). As with all models, it is important to understand the methods, assumptions, limitations, and uncertainties of the methods used. The risks associated with use or non-use of the results are assumed by the user.”