

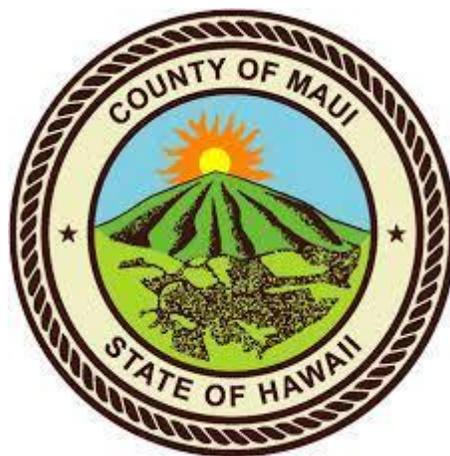
2022 Updates:
Special Management Area
and Shoreline Rules

Update Overview and
Responses to
Frequently Asked
Questions

Proposed Updates to the Maui Planning Commission
Special Management Area and Shoreline Rules
Responses to Frequent Comments and Questions
April 2022 Update

This document provides an update to ongoing dialogs with the Maui County Planning Department, the Maui Planning Commission, and the community of the island of Maui since 2017. These “FAQs” include and update the 2019 version to highlight proposed modifications that aim to address questions and concerns raised in prior versions.

To submit questions, receive meeting updates, or schedule a meeting with your organization to learn more, please contact planning@mauicounty.gov



Maui Planning Commission Rule Updates Overview

WHO: *The Maui County Planning Department, the Maui Planning Commission, and the community of the island of Maui.*

WHAT: *Working together to revise “Special Management Area” (SMA) and “Shoreline” rules under the Maui Planning Commission. The current versions of these rules can be found within the Maui Code, Chapter 12, [Subtitle 2-202 \(SMA Rules\)](#) and Chapter 12, [Subtitle 2-203 \(Shoreline Rules\)](#).*

WHEN: *Revisions have been in preparation over the last decade and public discussion has been underway since 2019. This document reflects the current 2022 update which is being presented for public comment and review.*

WHY: *The proposed changes to the SMA and Shoreline Rules are intended to balance wise use and coastal development priorities while avoiding, minimizing, and mitigating significant impacts to our shared environment.*

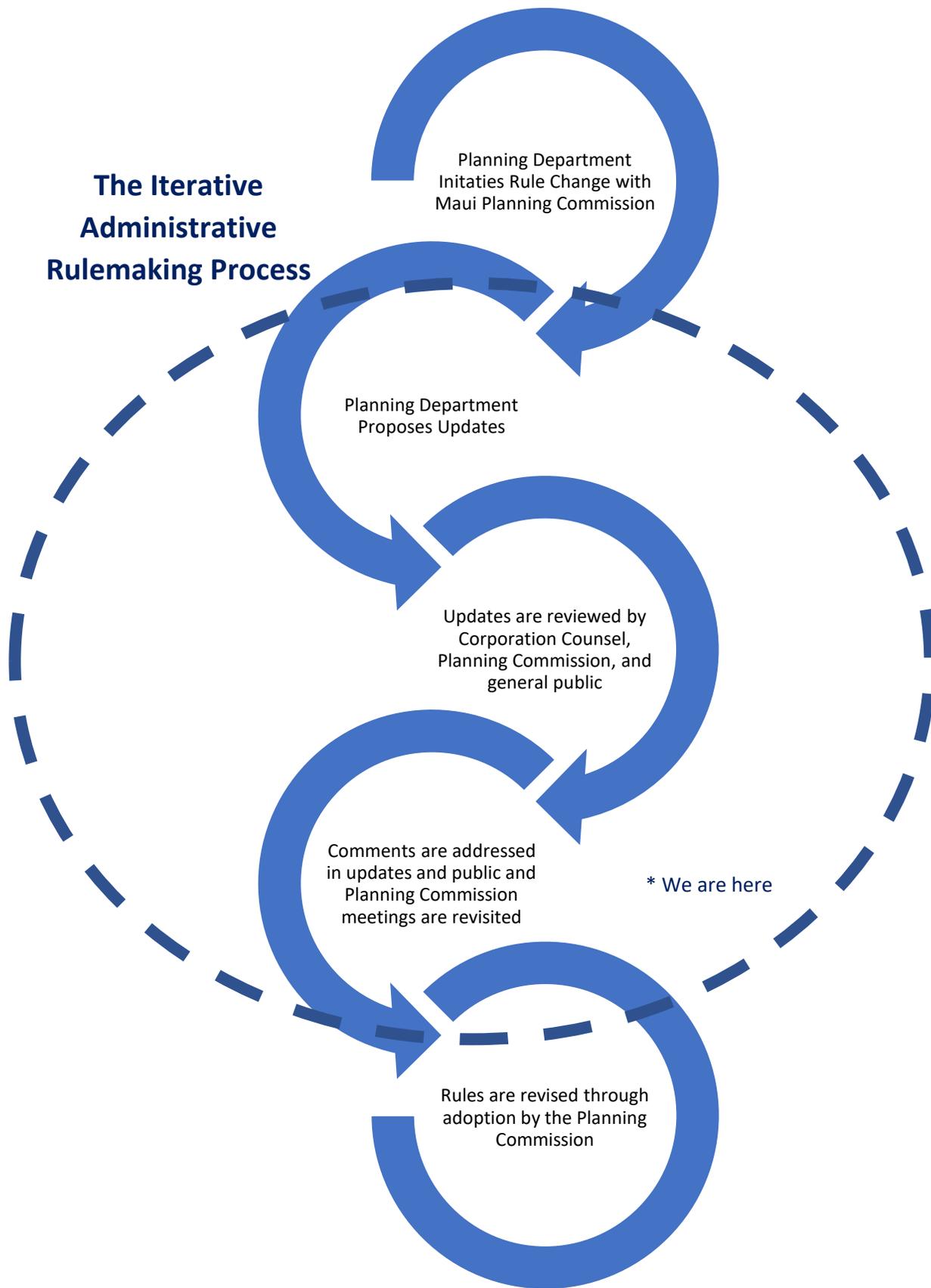
HOW: *This document provides an overview of currently proposed updates and also updates the 2019 Shoreline Rules “FAQs”*

This document contains the following:

- Graphic of the rule update process (p.3)
- Summary of the 2022 version of the rule amendments (pp. 4-7)
- Updates to the 2019 Shoreline Rule FAQs (pp. 8-16)

The intention of this document and forthcoming public meetings is to provide updated information so community members can be aware and comment through the public comment process. Please email planning@mauicounty.gov to sign up for listserv announcements, or visit our website <https://www.mauicounty.gov/121/Planning-Department> to learn more and get involved!

The Iterative Administrative Rulemaking Process



**2022 Planning Department
Summary of Special Management Area (SMA) and Shoreline Rules Update**

Question: What is the Purpose of the 2022 Rule Updates?

Response: *Address comments from the public and Maui Planning Commission on 2019 revisions.*

Question: What are the updates since the 2019 revision the public reviewed?

Response: *Revised SMA and Shoreline Rules incorporate prior comments and aim to clarify and address issues raised regarding application of these rules to development within the SMA and Shoreline areas. This includes the revision and addition of new definitions and the clarification and modification of existing provisions that aim to balance wise development and management within sensitive coastal areas.*

Revised Terms:

Terms used in the Rules will be defined including “Mauka”, “Makai”, “Cumulative Impacts”, “Sea level rise exposure area”, “restaurant dining area”, and “Structural Improvements”.

“Nonstructural”, “sand”, and “plan” definitions are clarified and updated.

The distances that create the “erosion hazard line” from the Hawaii Sea Level Rise Viewer are the basis for replacing the existing formula for calculating erosion-based shoreline setbacks. The erosion hazard line and Hawaii Sea Level Rise Viewer reflect best available science regarding coastal erosion and flooding risks that is applied to support environmental impact analysis during development and resource management planning.

The goal of modifications to the definitions of “reconstruction” and “major improvement” is to allow reasonable and appropriate renovations and expansions on the shoreline, especially within the erosion hazard line, by lowering the threshold for triggering a *reconstruction* and defining a limit on improvements that can qualify for an SMA exemption.

“Plot plan” was revised to reflect considerations of a “development plan” in definitions and in sections 202-9 and 203-9 to clarify guidance and ensure that necessary information is included in applications.

“Cumulative impact” and “cumulative effect” are included to guide environmental impact analysis required by Hawaii Administrative Rules Chapter 11-200.1 and Hawaii Revised Statutes Chapter 343, which read together require analysis of cumulative effects may include impacts or effects to a subject parcel or multiple other parcels in both time and space, mauka to makai.

A definition of “restaurant dining area” is proposed to support low-impact, temporary commercial activities within the shoreline area that do not negatively impact environmental site conditions or public access.

These definitions also aim to clarify “development” and “nondevelopment” to correspond with existing requirements under HRS § 205A and proposed “no need” exempted actions in the currently proposed SMA and Shoreline Rules updates.

Definitions that were not used or no longer used in the SMA and Shoreline rules were omitted.

Modified definitions are proposed for SMA and Shoreline Rules for consistency.

Key Revised Provisions:

SMA and Shoreline Categorical Exemptions (§12-202-11.5 and §12-203-10) were expanded to include exemptions for activities that are typically determined not to have significant cumulative or direct environmental or ecological effects or would not be expected to have significant negative effects with the use of best management practices that will be evidenced through a “declaration” form. Exemptions for temporary emergency response activities are also proposed in the 2022 update in part as a response to observed recovery and regulatory challenges that resulted from the December 2021 Kona Low emergency declaration. See the “tiers” of review in the Shoreline Rules provided on the next page.

The process for establishing shoreline setback lines in §12-203-6 was revised to ensure conformity with HRS §205A and best available scientific data. Under the revised section, an actual distance is used to measure the shoreline setback; an applicant may choose to obtain a shoreline certification pursuant to HAR §13-222 or use the shoreline setback line for areas where the erosion hazard line is mapped by the department. For areas where there is no mapped erosion hazard line, the setback line is established from the certified shoreline as established by §12-203-6(a)(2).

§12-203-12, regarding allowable structures and activities within the shoreline area, was revised to allow and encourage repairs of lawful nonconforming structures situated entirely mauka of the sea level rise exposure area on nonerodable land provided existing parameters are met, and to allow for repairs to structures that will become nonconforming upon the adoption of these rule amendments within certain parameters to allow for reasonable use and repair of existing development.

Clarifying text was added to allow for limited temporary measures and provide additional clarity regarding emergency permit procedures in the SMA (§ 12-202-16) and Shoreline (§12-203-12(a)(13) Rules, where activities that have received a SMA emergency permit pursuant to §12-202-16 is allowable subject to §12-203-13.

In the 2022 update, SMA and Shoreline Categorical Exemptions (§12-202-11.5 and §12-203-10) were expanded to include exemptions for activities that are typically determined not to have significant cumulative or direct environmental or ecological effects or would not be expected to have significant negative effects; some of these will require best management practices that will be evidenced through a “declaration” form. The “Tiering ‘development’ thresholds” summary below aims to highlight these changes in the Shoreline Rules (the purpose and approach are applied to both the Shoreline and SMA Rule updates).

Three “tiers” of review in the Shoreline Rules for activities in the shoreline area:
 no permit needed for the action; the action is not allowed; the action is allowed with a permit

<p>12-203-10</p> <p>Structures and activities subject to these rules; exceptions.</p>	<p>12-203-11</p> <p>Prohibited activities within the shoreline area.</p>	<p>12-203-12</p> <p>[Permitted] Allowable structures and activities within the shoreline [setback]area.</p>
<ul style="list-style-type: none"> Proposed “no needs” for projects that are not anticipated to result in significant effects and, therefore, do not need any permits, reviews or filings Proposed “no needs” that require Best Management Practices to ensure that any impacts will be mitigated; this is achieved through the filing of a “declaration.” Examples include emergency response during declared disasters, nonstructural interior repairs and renovations that do not involve expansion or intensification of use, nonstructural exterior repairs, certain operations and maintenance activities, and small patching and resurfacing activities less than 1,000 square feet <p><i>Purpose: Expedites projects identified as not having significant impacts or having no significant impacts with standard BMPs with declarations filed with the Department</i></p>	<ul style="list-style-type: none"> One proposed revision to allow minimal sand removal for flood control purposes No additional changes proposed in this section <p><i>Purpose: Maintains prohibitions with minor revision to allow for measures to address flood control needs that involve minimal sand removal or pushing</i></p>	<ul style="list-style-type: none"> Proposed clarification regarding repairs for nonconforming structures within the shoreline and SLR-XA Addition of new provisions to support adaptive management and reconstruction of structures, shoreline restoration activities, and low impact development improvements; to ensure minimal buildable areas; and to support temporary commercial use for restaurant dining areas Proposed clarification regarding repairs to structures damaged by natural disasters or other calamity <p><i>Purpose: Clarified allowable activities and parameters that ensure such activities do not have significant impacts, support long-term planning recommendations and best practices, and support beneficial activities within the shoreline</i></p>

2019 Shoreline Rules FAQ with 2022 Updates

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

The text below are the 2019 Shoreline Rule FAQs with *italicized text providing additional information for the 2022 update.*

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.

2022 Update:

The process for establishing shoreline setback lines in §12-203-6 was revised to ensure conformity with HRS §205A and best available scientific data. Under the revised section, an applicant may choose to obtain a shoreline certification pursuant to HAR 13-222 or use the shoreline setback line for areas where the erosion hazard line is mapped by the department. For areas where there is no mapped erosion hazard line, the setback line is established from the certified shoreline as established by §12-203-6(a)(2).

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)?

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

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 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.

2022 Update:

Proposed revisions to SMA and Shoreline Rules aim to encourage and incentivize adaptive reconstruction and mitigation interventions to further support beneficial use of property and public safety and wellbeing through these provisions.

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.

2022 Update:

The 2022 proposed revisions would also expand allowable activities within the shoreline setback. In §12-203-12, allowable structures and activities would include repairs to a lawful nonconforming structure situated entirely mauka of the sea level rise exposure area (SLRXA) on nonerodable land, and repairs of structures that become nonconforming due to the adoption of these rule updates with some limiting considerations. Activities that support the restoration and adaptation of existing lawful or lawful nonconforming structures within the SLRXA are encouraged. They are listed "allowable" activities to further encourage beneficial property use.

9. Comment:

The Hawaii 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 Hawaii 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.

2022 Update:

Please note that proposed revisions would further support adaptation and mitigation options. If appropriate shoreline protection is pursued, new small habitable structures may be allowable as detailed in "Allowable structures and activities in the setback area" §12-203-12(a)(20). Active management of dunes and landscaping is also included in these revisions in §12-203-12(a). Revised rules also would use the projected Sea Level Rise Exposure Area (SLRXA) to identify and inform development in high risk areas reflecting best available data and encourage proactive management interventions. Proposed revisions also aim to encourage activities that seek to implement "adaptive reconstruction" and mitigation planning such as modifying existing structures through elevation or retreating to reduce risk of impacts from sea level rise and increasing storm surge and erosion events to property and community members. The 2022 Update aims to unify Maui Island's SMA and Shoreline management approach with state requirements established by the adoption of Act 16 in September, 2020.³

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

³ See https://www.capitol.hawaii.gov/session2020/bills/GM1121_.pdf.

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.

2022 Update:

Please note that the proposed addition of §12-203-12(a)(6) may provide residents greater latitude for preventative maintenance and adaptive reconstruction activities such as elevating or setting back structures that are identified as being within high risk coastal hazard areas. The proposed revisions in §12-203-12(a)(7) may provide more flexibility to support repairs within the shoreline area which are currently limited to repairs that have been caused by natural hazards or calamity.

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.

2022 Update:

The Maui Planning Commission will make the final determination on what structures can be reconstructed, the extent to which they can be reconstructed, and the basis for reconstruction.

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.

2022 Update:
It should be noted that Act 16 (2020) amended Chapter 205A to specifically prohibit private shoreline hardening structures and minimize public shoreline hardening structures, including seawalls and revetments, at sandy beaches where they would interfere with existing activities.

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 Hawaii 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.”