

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment and Compilation of Chapter 13-222
Hawaii Administrative Rules

Adopted on December 13, 2002

SUMMARY

1. §§13-222-2 is amended
2. §§13-222-7 is amended
3. §§13-222-8 is amended
4. §§13-222-9 is amended
5. §§13-222-10 is amended
6. §§13-222-11 is amended
7. §§13-222-12 is amended
8. §§13-222-16 is amended
9. §§13-222-17 is amended
10. §§13-222-18 is amended
11. §§13-222-19 is amended
12. §§13-222-26 is amended
13. Chapter 222 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 10

LAND DIVISION

CHAPTER 222

SHORELINE CERTIFICATIONS

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§13-222-26 Appeal of shoreline certification

SUBCHAPTER 1

GENERAL PROVISIONS

§13-222-1 Purpose and applicability. The purpose of these rules is to standardize the application procedure for shoreline certifications for purposes of implementing the shoreline setback law and other related laws. These rules shall be applicable to all real properties within the State of Hawaii which border the ocean. [Eff 12/10/88; comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §205A-42)

§13-222-2 Definitions. As used in this chapter unless otherwise clearly indicated:

"Accretion" means the gradual accumulation of land on a beach or shore by the action of natural forces. For purposes of quieting title, accretion must be natural and in existence for at least twenty years.

"Applicant" means the person submitting an application for shoreline certification.

"Board" means the board of land and natural resources of the State of Hawaii.

"Chairperson" means the chairperson of the board of land and natural resources.

"Department" means the department of land and natural resources of the State of Hawaii.

"Erosion" means the gradual wearing away of land on a beach or shore by the action of natural forces.

"Instrument survey" means the location of the boundary of a property of record and shoreline using land surveying instruments.

"Line of debris" means a line marking the mauka or landward limit of debris deposits resulting from wave uprush.

"Permanent mark" means a mark imbedded in the ground such as a pipe, or a mark on a boulder or artificial structure which is not readily removable.

"Person" means any individual, partnership, firm, association, trust, estate, private corporation, quasi-public corporation or entity including utilities and government bodies.

"Property owner" means the equitable or legal holder of interest in, or the lessee holding under a recorded lease for the real property for which a shoreline certification is requested, or the authorized agent.

"Revetment" means a sloping facing of stone, concrete, blocks or other similar material built to protect the embankment or shore against erosion by wave action or current.

"Seawall" means a structure with a vertical face separating land and water areas, primarily designed to prevent erosion and other damage due to wave action.

"Shoreline" means the upper reaches of the wash of the waves, other than storm or 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. [Eff 10/12/88; am JUN 03 2006] (Auth: HRS §§250A-42, 205A-49) (Imp: HRS §§205A-42)

"Shoreline certification" means a signed statement by the chairperson of the board of land and natural resources that the shoreline is as located and shown on the map as of a certain date.

"Side property boundaries" means that property boundary which intersects or, when extended, intersects with the shoreline.

"State land surveyor" means the land survey administrator of the survey division, department of accounting and general services, State of Hawaii.

"Storm or tidal waves" means waves of unusual magnitude which occurred on a specific date as part of a specific and identifiable hurricane storm or tsunami event, to exclude seasonal high surf.

"Tape check" means an on the ground check of distances using an engineers measuring tape.

"Vegetation growth" means any plant, tree, shrub, grass or groups, clusters, or patches of the same,

naturally rooted and growing. [Eff 12/10/88; am and
comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49)
(Imp: HRS §§205A-1, 205A-42)

SUBCHAPTER 2

APPLYING FOR SHORELINE CERTIFICATION

§13-222-7 Application. (a) Application for a shoreline certification shall be in writing, addressed and mailed to the department.

- (b) The application shall contain the following:
1. The purpose for which the certification is being applied.
 2. The location (district and island) and the tax map key number of the parcel involved.
 3. The name and mailing address of the property owner. If the owner is represented by an agent, the name and mailing address of the agent shall also be included.
 4. The address of the property involved.
 5. Photographs of the shoreline to be certified, in accordance with section §13-222-8.
 6. Maps of the shoreline to be certified, in accordance with section §13-222-9.
 7. A statement as to when the field survey was done and by whom.
 8. The name, address and telephone number of the licensed land surveyor who made or supervised the field survey.
 9. List of all enclosures.
 10. Signature of the property owner.
 11. Application fee, in accordance with subsection(d).
 12. A statement signed by the property owner granting representatives of the State of Hawaii, including the state land surveyor, the right to enter the property at reasonable business hours for the purpose of site inspection and verification of the shoreline under review for certification. The property owner shall also be responsible for

submitting any other statements signed by applicable owners granting representatives of the State of Hawaii, the right to enter land which is not owned by the property owner but is necessary to access for the purpose of site inspection and verification of the shoreline under review for certification.

13. A copy of any federal, state, or county enforcement or other legal action involving the subject shoreline.
14. If the shoreline is being located at the base of a manmade structure, a copy of all documents supporting that the structure has been approved by the appropriate governmental agencies or is exempt from such approval.
15. Any other information requested by the department or the state land surveyor as reasonably necessary to evaluate the application.

(c) A minimum of seven (7) maps shall be filed with the application.

(d) A fee of seventy-five (75) dollars shall be assessed the applicant for the processing of the shoreline certification, plus reimbursement of any costs incurred by the State of Hawaii. This fee may be waived for federal, state and county projects. This fee may be returned to the property owner only where the application is withdrawn by the property owner prior to the department initiating its review for completeness.

(e) Applications shall be made available for public inspection at the district office where the property is located, at the department's main office, and at the state land surveyor's office.

(f) Any application submitted to the department pursuant to this chapter shall be reviewed by the department for completeness in a timely manner. If the application is found to be incomplete, the applicant shall be notified in writing stating the reasons for the rejection. If an application is accepted for processing, the applicant shall be notified in writing stating the commencement and completion dates for the processing of the application. The completion date shall be 90 days from the commencement date.

(g) If, after 90 days from the department's acceptance of a completed application or the expiration of any extension granted on the application, the department fails to render a decision on an application, the shoreline application shall be deemed certified and the chairperson shall certify the maps, subject to subsections (h), (i), and (j) and section 13-222-26. An appeal under section 13-222-26 shall suspend the processing time period, and the application shall follow the timeframe set forth in section 13-222-26.

(h) This 90-day time period shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance.

(i) If, upon review of an application, the department or the state land surveyor finds: (1) non-compliance with any rule under this chapter, (2) irregularity in surveying methods utilized, or (3) the application or any information submitted by the applicant to be in error or a misrepresentation of the facts, then the application shall be denied and returned to the applicant, the 90-day time period shall cease, and the applicant shall be required to resubmit a new application.

(j) For good cause shown, where no appeal has yet been filed under section 13-222-26, the department may extend the 90-day time period a maximum of an additional 180 days. [Eff 12/10/88; am and comp
MAR 29 2003] (Auth: HRS §§205A-42, 205A-49)
(Imp: HRS §205A-42)

§13-222-8 Photographs. (a) A minimum of three sets of photographs, in color, shall be taken of all shorelines and shall be submitted, together with the application.

(b) The shoreline as delineated on the map shall be indicated on each photograph. The permanent markings on the ground or flaggings placed to depict the shoreline shall be indicated on the photographs.

(c) Each photograph shall be labeled by number or alphabet to coincide with the map showing the direction of the photograph taken.

(d) Photographs shall provide accurate perspectives of the shoreline in relation to permanent markings or other land features.

(e) Each photograph shall be marked with the date and time taken. [Eff 12/10/88; am and comp

MAR 29 2003] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §205A-42)

§13-222-9 Maps. (a) Maps filed with the application for shoreline certification shall be on whiteprints and shall be of one of the following sizes indicated in inches:

1. 8-1/2 x 13
2. 10 x 15
3. 13 x 23
4. 15 x 21
5. 21 x 32
6. 22 x 36
7. 24 x 36
8. 30 x 36
9. 36 x 42
10. 42 wide with length of 42 to 72.

(b) Maps shall be drawn using an engineer or architect scale, only in units of feet. The scale used shall be clearly noted on the map. No reduced or enlarged maps shall be submitted.

(c) Maps submitted for shoreline certification shall be based on an actual field survey conducted within ninety (90) days prior to the filing for a shoreline certification.

(d) All maps submitted for shoreline certification shall have the licensed land surveyor's seal and testament indicating that the work was done by the land surveyor or under the land surveyor's supervision.

(e) The following information and identification marks shall be included on the maps submitted for shoreline certification:

- (1) The maps shall indicate true north pointing towards the top.
- (2) Title of the maps and reference to locality in which the land is situated shall include the original source of title and name of

awardee, patentee, grantee, whichever the case may be, in addition to the ili, and ahupuaa, district and island, together with the tax map key of the parcel involved and the property owner's name and address.

- (3) All the permanent identification marks established on the ground and all pertinent azimuths and distances shall be shown on the map.
- (4) The type of shoreline being determined shall be indicated on the maps, whether the shoreline located is a vegetation line, debris line, upper reaches of the wash of the waves, face of artificial structure (seawall, revetment, etc.) or a combination thereof.

(f) At least two of the maps submitted shall show the direction the photographs were taken and the point or shoreline depicted in the photographs. [Eff 12/10/88; am and comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §205A-42)

§13-222-10 Review, revision and certification.

(a) The state land surveyor shall review the map, using the photographs, other documents and information provided by the applicant, and the state land surveyor's knowledge of the affected area to determine the shoreline.

(b) The state land surveyor may make or cause to be made a site inspection prior to determining the shoreline. The state land surveyor may consult with the licensed land surveyor who made the field survey and prepared the map and interested persons who submitted comments to the application to resolve differences in interpretation of the shoreline. The state land surveyor may require the applicant to revise the map.

(c) The state land surveyor shall have the right to enter property owner's premises to verify the shoreline map on the ground. Submission of the application shall constitute consent of the property owner to enter the premises during reasonable business hours.

(d) When satisfied with the location of the shoreline, the state land surveyor shall transmit the shoreline maps to the chairperson for his approval and signature.

(e) This map shall be the proposed shoreline certification. The public notice of this proposed shoreline certification shall be made in accordance with section 13-222-12.

(f) Upon the expiration of fifteen (15) calendar days from the public notice of the proposed shoreline certification, if no appeal is filed pursuant to section 13-222-26, then the chairperson shall certify the shoreline in the location proposed on the map submitted by the applicant.

(g) If an appeal is filed under section 13-222-26, the certification process shall be stayed until the administrative appeal is resolved by the board or chairperson.

(h) Upon certification by the chairperson, five copies of the map shall be retained by the department and the remainder shall be returned to the applicant. [Eff 12/10/88; am and comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §205A-42)

§13-222-11 Validity of certified shoreline. (a) Certification of the shoreline shall be valid for a period no longer than twelve months from the date of certification, except where the shoreline is fixed by artificial structures which have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure 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 a licensed land surveyor that, in the surveyor's expert opinion, the artificial structure remains intact and unaltered since the shoreline was certified, and submission of maps and photographs for verification, the chairperson may confirm the validity of the certified shoreline pursuant to this section.

(b) The department shall have the authority to review any shoreline certification during its twelve-

month validity period and shall have the authority to rescind the certification where there is a substantial misrepresentation of material fact in the original application, whether intentional or unintentional, as determined by the state land surveyor or department. [Eff 12/10/88; am and comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §205A-42)

§13-222-12 Public Notice of Application and Certification. (a) The department shall cause public notices of the receipt of an application for and a proposed certification or rejection of the shoreline. Public notices will be made in the Environmental Notice, a semi-monthly publication of the Office of Environmental Quality Control, State of Hawaii.

(b) All persons interested in being notified of an application for and any proposed certification or rejection of the shoreline shall request of the chairperson, in writing, to be placed on the department's mailing list.

(c) All comments to the application for shoreline certification shall be submitted in writing to the state land surveyor and postmarked no later than 15 calendar days from the date of the public notice of the application. [Eff 12/10/88; am and comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §205A-42)

SUBCHAPTER 3

DETERMINATION OF SHORELINE

§13-222-16 Field survey. (a) The shoreline and the legal seaward boundary of the property shall be properly located, and marked, by instrument survey by a land surveyor licensed in accordance with chapter 464, Hawaii Revised Statutes, as amended.

(b) The licensed land surveyor shall utilize the following criteria in locating and marking the shoreline:

- (1) When the legal seaward boundary of the property is located mauka or inland of the

shoreline, both the seaward corners of the property line and the intersections of the extension of the side property boundaries and the shoreline shall be marked.

- (2) When filled land is involved, both the shoreline prior to the fill and the existing shoreline shall be marked.
- (3) When an irregular shoreline, such as a rocky coast or sand beach, measures 100 feet or more in length, intermediate points shall be marked on the ground, identified on the map, and shown on photographs.
- (4) On sandy beaches where permanent identification marks such as pipes protruding above the sand would create a dangerous situation, other existing permanent features or improvements such as trees, hedges, buildings and other structures may be used to reference the shoreline and shall be indicated on the map.
- (5) When the seaward face of an artificial structure is only a portion of the shoreline, both ends of the structure shall be marked.
- (6) On cliffs or ledges where a ground survey of the shoreline may be extremely difficult, the top of the cliff or ledge may be marked and depicted as the shoreline on the map.
- (7) Where an artificial wall seaward of the natural shore is used to create a fishpond, the shoreline shall be at the natural shore and not at the artificial outer wall.
- (8) When the shoreline is interrupted by a river or stream, both sides of the river or stream shall be marked at the shoreline.
- (9) When the shoreline has been altered by subsidence due to earthquake, storm or tidal waves, the shoreline shall be marked at the existing shoreline and if physically possible, the shoreline prior to the property loss shall be marked.
- (10) When the shoreline is located at a seawall, the seaward face of the seawall shall be marked and identified on the map.

- (11) When the shoreline is located at a revetment, the bottom ("toe") of the revetment shall be marked and identified on the map.
- (12) In locating the edge of vegetation or the upper limit of debris, the licensed land surveyor shall take into consideration the natural physical features on the ground (i.e., type of vegetation, elevation of the area, salt deposits, coloration of rock formations, wetline, etc.).
- (13) When a shoreline has been permanently altered by the development of a harbor, lagoon, marina, or other water facility, the shoreline shall be at the mouth of the harbor, lagoon, marina, or water facility; provided, however, that this provision shall not apply where the harbor, lagoon, marina or water facility consists of both natural as well as artificial shorelines (i.e., Pearl Harbor). [Eff 12/10/88; am and comp
MAR 29 2003] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §205A-42)

§13-222-17 Identification of shoreline on map.

The map to be submitted for shoreline certification shall be prepared utilizing the following criteria in addition to those listed in §13-222-16:

- (1) When the shoreline includes a river or stream, a straight line joining the marked sides of the river or stream shall indicate the shoreline across the river or stream.
- (2) All artificial structures, (i.e. seawalls, revetments, docks, piers, groins, etc.) shall be shown on the map together with their relative position to the property line.
 - (i) If the structure is makai or seaward of the legal seaward boundary of the property, proper documentation, such as a building permit, written authorization of governmental agency permitting construction of the structure, proof of accretion prior to construction of the structure, or any other document

indicating that the structure was legally constructed, shall accompany the application for shoreline certification; and

- (ii) When the structure is located mauka or inland of the legal seaward boundary of the property and the seaward face of the wall is the shoreline, the map shall show the erosion in the manner prescribed in subsection (3).
- (3) When the field survey reveals erosion along the legal seaward boundary of the property, the map shall show:
- (i) The new and old distance of the property along its side boundaries;
 - (ii) The new metes and bounds along the shoreline and the legal seaward boundary of the property;
 - (iii) The new area of the property as well as of the eroded area; and
 - (iv) The prior certified shoreline, if any, noted with its certification date.
- (4) When the field survey reveals accretion, the map shall show:
- (i) The old metes and bounds of the property and its area;
 - (ii) The distance from the legal seaward boundary of the property to the shoreline along the extension of the side property boundaries;
 - (iii) The prior certified shoreline, if any, noted with its certification date; and
 - (iv) The certified map determining the shoreline shall not establish or purport to convey title to accreted land. Title to accreted land shall be determined by court decree pursuant to law.
- (5) When a field survey reveals that the land has been filled, the map shall show:
- (i) The old metes and bounds of the property and its area;
 - (ii) The distance from the legal seaward boundary of the property to the

- shoreline along the extension of the side property boundaries;
- (iii) The prior certified shoreline, if any, noted with its certification date;
 - (iv) If there is no prior certified shoreline, then the shoreline as it may have existed prior to the fill; and
 - (v) Unless legal title can be shown to the contrary, all filled areas shall designate "State of Hawaii" as owner and shall be treated as an encroachment under §13-222-19.
- (6) When surveying a fishpond, adjoining the ocean, the artificial wall seaward of the natural shore of the fishpond shall be shown on the map. The area of the fishpond and its ownership shall also be designated.
 - (7) When the field survey reveals loss of property by subsidence due to earthquake, or storm or tidal waves, the map shall show:
 - (i) The metes and bounds of the property and its area before and after the property loss;
 - (ii) The new area of the property as well as the area lost due to the subsidence;
 - (iii) The new and old distance of the property along its side property boundaries; and
 - (iv) The prior certified shoreline, if any, noted with its certification date.
 - (8) New land created by a lava flow shall designate the "State of Hawaii" as owner.
 [Eff 12/10/88; comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §§205A-42, 183-45, 501-33, 669-1(e))

§13-222-18 Restoration of shoreline. (a) In cases where the shoreline has been lost due to subsidence due to earthquake, or storm or tidal waves, the property owner may apply to the department to certify the shoreline at or near the location which existed immediately prior to the event that resulted in the property loss.

(b) The property owner, in addition, shall also submit an application to restore the shoreline at or near the location which existed immediately prior to the event that resulted in the property loss. If the shoreline is not restored within one year from the time of the event which caused the property loss, the chairperson shall certify the existing shoreline. This time period may be extended by the chairperson upon substantial compliance with this section.

(c) The property owner shall be required to provide documentation satisfactory to the department of the following:

- (1) The event which resulted in the property loss;
- (2) The extent of the damage to the shoreline; and
- (3) Any demonstrative evidence depicting the shoreline before and after the event which caused the property loss.

(d) The property owner shall be responsible for obtaining all other federal, state and county permits applicable to restoration of the property. [Eff 12/10/88; am and comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §§183-41, 205A-42)

§13-222-19 Encroachment upon state land and unauthorized shoreline improvements. The chairperson shall not certify the shoreline in cases where an unauthorized improvement encroaches upon state land or where an unauthorized improvement interferes with the natural shoreline processes. The property owner shall first resolve the encroachment or violation problem with the applicable department prior to the chairperson certifying the shoreline. [Eff 12/10/88; am and comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §§205A-42, 171-6)

SUBCHAPTER 4

APPEAL OF SHORELINE CERTIFICATION

§13-222-26 Appeal of shoreline certification.

- (a) Upon timely application, the following persons or agencies may have standing to appeal:
- (1) The property owner who requested the shoreline certification.
 - (2) All government agencies whose jurisdiction includes the land in question.
 - (3) All persons or agencies who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who can otherwise demonstrate that they will be so directly and immediately affected by the proposed shoreline certification or denial, that their interest is clearly distinguishable from that of the general public.
 - (4) Other persons or agencies who can show a substantial interest in the matter; provided that the board or chairperson may grant standing only if the person's or agency's participation will substantially assist the board or chairperson in its decision making.
- (b) The board or chairperson, as provided by law, may deny standing to appeal when it appears that:
- (1) The position of the appellant is substantially the same as the position of a person or agency already permitted to appeal; and
 - (2) The admission of additional persons or agencies will not substantially add new information or the addition will render the proceedings inefficient or unmanageable.
- (c) Any person or agency wishing to appeal shall file a notice of appeal in writing with the department no later than 20 calendar days from the date of the public notice of the proposed shoreline certification or rejection.

(d) The notice of appeal shall state the legal and factual basis for the appeal.

(e) Upon determination that a person or agency has standing to appeal, the chairperson by written order shall set forth the schedule for the briefs and requirements for the briefs.

(f) The sole issue on appeal shall be whether the proposed shoreline certification or rejection was proper.

(g) Upon the receipt of all briefs, the board or chairperson shall act on any appeal within 60 calendar days. If the board or chairperson fails to act on any appeal within 60 calendar days of the receipt of all briefs, the appeal shall be deemed denied. The department may enlarge or shorten this deadline by written order signed by the chairperson." [Eff 12/10/88; am and comp **MAR 29 2003**] (Auth: HRS §§205A-42, 205A-49) (Imp: HRS §205A-42)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to chapter 13-5, Hawaii Administrative Rules were adopted on December 13, 2002, following public hearings held on September 26, 2002, and October 1, 2, and 3, 2002 after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on August 15, 19, and 26, 2002.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

/S/ _____
PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

/S/ _____
LINDA LINGLE
Governor
State of Hawaii

Dated: 03/18/03

Filed

APPROVED AS TO FORM:

/S/ Yvonne Izu
Deputy Attorney General