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TITLE MC-12
DEPARTMENT OF PLANNING
SUBTITLE 02
MAUI PLANNING COMMISSION
CHAPTER 203
SHORELINE RULES FOR THE MAUI PLANNING COMMISSION

Subchapter 1	General Provisions
§12-203-1	Title
§12-203-2	Purpose
§12-203-3	Applicability
§12-203-4	Definitions
§12-203-5	Severability
Subchapter 2	Shoreline Setback Lines; Shoreline Area
§12-203-6	Establishment of shoreline setback lines
§12-203-7	Request for [a shoreline setback determination or an annual erosion hazard rate amendment] <u>an amendment to a shoreline setback line established by the erosion hazard line</u>
§12-203-8	Determination of the shoreline
§12-203-9	Site plans
§12-203-10	Structures and activities subject to these rules
§12-203-11	Prohibited activities within the shoreline area
§12-203-12	[Permitted] <u>Allowable</u> structures and activities within the shoreline [setback] area.
§12-203-12.5	Abandoned or eroded structures.
§12-203-13	<u>Request for [a determination] approval of structures and activities in the shoreline[setback] area</u>

1
2 Subchapter 3 Variances
3
4 §12-203-14 Variance application
5 §12-203-15 Criteria for approval of a variance
6
7
8 Subchapter 4 Enforcement; Penalties
9
10 §12-203-16 Enforcement
11 §12-203-17 Penalties
12
13
14 Subchapter 5 Appeals
15
16 §12-203-18 Appeal of director's decision; filing the notice of
17 appeal
18 §12-203-19 Content of the notice of appeal
19 §12-203-20 Joint or consolidated appeals
20 §12-203-21 Service of the notice of appeal
21 §12-203-22 Payment of fees
22 §12-203-23 Contested case hearing on appeal
23 §12-203-24 Disposition of appeal
24

25 **SUBCHAPTER 1**

26 **GENERAL PROVISIONS**

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28
29
30 **§12-203-1 Title.** The rules in this chapter shall be known as the
31 "Shoreline Rules for the Maui Planning Commission." [Eff 11/27/03]
32 (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4,
33 13-2(15)) (Imp: HRS Chapter 205A, Parts I and III; Maui County Charter
34 §§8-8.4, 13-2(15))
35

36 **§12-203-2 Purpose.** (a) The purpose of this chapter is to establish
37 shoreline rules that regulate the use and activities of land within the
38 shoreline environment in order to protect the safety and welfare of the
39 public by providing protection from coastal natural hazards; and to ensure
40 that the public use and enjoyment of our coastal resources are preserved

1 and protected for future generations in accordance with the Hawaii coastal
2 zone management law, HRS chapter 205A (OP).

3 (b) One of the most important and significant natural resources of
4 the County of Maui is its shoreline environment. Due to competing
5 demands for utilization and preservation of the beach and ocean
6 resources, it is imperative:

7 (1) That use and enjoyment of the shoreline area be ensured for
8 the public to the fullest extent possible;

9 (2) That the natural shoreline environment be preserved;

10 (3) That [man-made] constructed features in the shoreline area
11 be limited to features compatible with the shoreline area;

12 (4) That the natural movement of the shoreline be protected from
13 development;

14 (5) That the quality of scenic and open space resources be
15 protected, preserved, and where desirable, restored; and

16 (6) That adequate public access to and along the shoreline be
17 provided.

18 These steps are necessary because development and other [man-
19 made] constructed improvements have resulted in encroachment of
20 structures near the shoreline and, in numerous instances, erosion and
21 other disturbances affecting the natural movement of the shoreline.
22 Moreover, these steps are also necessary because the Hawaiian Islands are
23 subject to coastal natural hazards such as tsunamis, high wave action,
24 sea level rise, hurricanes, coastal flooding, and coastal erosion that pose
25 hazards to residences and other structures near the shoreline. [These
26 hazards may also necessitate the need to harden the shoreline to protect
27 structures which may have an adverse impact on the environment.
28 Further, continual replacement of structures damaged or destroyed by
29 ocean conditions may cause an economic hardship to other flood
30 insurance policy holders by the increase in premiums. Consequently, the
31 purpose of this chapter is to establish shoreline rules which regulate the
32 use and activities of land within the shoreline environment in order to
33 protect the health, safety, and welfare of the public by providing minimum
34 protection from known coastal natural hazards; and to ensure that the
35 public use and enjoyment of our shoreline resources are preserved and
36 protected for future generations in accordance with the Hawaii coastal
37 zone management law, HRS chapter 205A.] Shoreline hardening has
38 historically been the response to impacts from coastal hazards such as
39 shoreline erosion, and this approach is now widely recognized in most
40 cases to have an adverse impact on neighboring properties and the beach

1 system. To prioritize coastal resilience, and to preserve and restore coastal
2 and cultural resources, preferred alternatives include options for nature-
3 based protection, and to avoid, accommodate, or shift away from coastal
4 hazards (OP and OCCL). [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts
5 I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1,
6 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)
7

8 **§12-203-3 Applicability.** These rules shall be applicable to all
9 lands located within the shoreline area of the Island of Maui, County of
10 Maui, State of Hawaii. The director may adopt rules and is authorized to
11 administer this chapter. [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts
12 I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1,
13 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)
14

15 **§12-203-4 Definitions.** For purposes of this chapter, unless it is
16 plainly evident from the context that a different meaning is intended,
17 certain words and phrases used herein shall be defined as follows:

18 "Adversely affect beach processes" means to pose a potential
19 immediate or future detrimental effect on beach processes as a result of a
20 structure or activity located within the shoreline [setback] area, or to pose
21 the need to artificially fix the shoreline.

22 ["Annual erosion hazard rate" means the annual rate of coastal
23 erosion calculated according to the methodology developed by the
24 University of Hawaii along transects placed at regular intervals of
25 approximately sixty-six feet and as indicated on maps on file with the
26 department. Said rates shall be updated on a regular basis at least once
27 every ten years, provided funding is budgeted for the purpose; or pursuant
28 to an annual erosion hazard rate amendment approved in accordance with
29 section 12-203-7. Land area outside of the boundary of these maps shall
30 have no annual erosion hazard rate. Where the shoreline is fixed by:

31 (1) Artificial structures that are nonconforming or that have been approved
32 by appropriate government agencies and for which engineering drawings
33 exist to locate the interface between the shoreline and the structure, or
34 (2) Exposed natural stabilized geographic features such as cliffs and rock
35 formations, the annual erosion hazard rate shall cease at the interface.

36 "Annual erosion hazard rate map" means a physical representation
37 or depiction of the annual erosion hazard rate as defined herein.]

38 "Artificially fix the shoreline" means to permanently establish the

1 shoreline.

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

7 "Beach nourishment" means the technique of placing sand or cobble
8 fill consistent with existing beach conditions along the shoreline to widen
9 the beach and provide a buffer against coastal erosion and wave attack.

10 "Best Management Practices" or "BMPs" means a set of mitigation
11 actions that are intended to protect the environment from harm and to
12 ensure that water quality and marine resources are protected during all
13 phases of a project or activity.

14 "Board approval" means approval of the board of land and natural
15 resources pursuant to HRS section 183-C, as amended.

16 "Certified shoreline survey" means the actual field location of the
17 shoreline prepared by a land surveyor registered in the State of Hawaii
18 that is signed, dated, and certified by the [chairman] chairperson of the
19 board of land and natural resources.

20 "Coastal dune" means one of possibly several continuous or nearly
21 continuous mounds or ridges of unconsolidated sand continuous and
22 immediately landward of the beach, situated so that it may be accessible
23 to storm waves and seasonal high waves for release to the beach or
24 offshore waters as defined by chapter 20.08, Maui County Code.

25 "Coastal erosion" means the wearing away of coastal lands, usually
26 by wave attack, tidal or littoral currents, or wind. Coastal erosion is
27 synonymous with shoreline (vegetation line) retreat.

28 ["Coastal erosion hazard zone" shall include all of the land area
29 between the shoreline and a line as established by measuring twenty-feet
30 plus a distance of fifty times the annual erosion hazard rate from the
31 shoreline.]

32 "Coastal hazards" means [hazards created by and limited to coastal
33 processes which are generated from waves or tides] any tsunami,
34 hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level
35 rise, subsidence, or point and nonpoint source pollution, as defined by
36 HRS 205A-1.

37 "Commission" means the Maui planning commission.

38 "Cumulative impact" or "cumulative effect" means the impact on the
39 environment that results from the incremental impact of the proposed
40 action when added to other past, present, and reasonably foreseeable

1 future actions regardless of what agency or person undertakes the other
2 actions. Cumulative impacts can result from individually minor but
3 collectively significant actions taking place over a period of time.

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

6 "Development plan" means a detailed drawing to scale that shows
7 the proposed activity or structure and all areas where work will be
8 performed. The plan shall include:

9 (1) Property boundaries;

10 (2) All existing natural and constructed features and conditions
11 that occur within the proposed area of work; and

12 (3) All proposed modifications to existing features, such as
13 excavation or other ground-altering activity (length, width, and depth), and
14 proposed new features and conditions.

15 The director may require that the plan include an accurate
16 instrument survey of the lot as well as cross sections of the lot at
17 designated locations to be prepared by a surveyor licensed in the State of
18 Hawaii.

19 "Director" means director of the department of planning.

20 "Dune restoration" means the technique of rebuilding an eroded or
21 degraded dune through one or more various methods, such as sand fill,
22 drift fencing, or revegetation.

23 "Erosion hazard line" means the mapped, 80 percent, cumulative
24 probability contour of the coastal erosion hazard zone with 3.2 feet of sea
25 level rise as approved by the director; such approval must reflect the best
26 available science as published in peer reviewed literature such as the
27 Hawaii Climate Change Mitigation and Adaptation Commission's 2017
28 Hawaii Sea Level Rise Vulnerability and Adaptation Report or its most
29 current iteration, as accessible within the Hawaii Sea Level Rise Viewer
30 hosted by the Pacific Islands Ocean Observing System, and that may be
31 updated to reflect best available science, with such updates also being
32 adopted by the Commission.

33 "Estuary" means that part of a river or stream or other body of water
34 having unimpaired connection with the open sea, where the sea water is
35 measurably diluted with fresh water derived from land drainage.

36 "Ground altering" or "ground disturbance" means grading,
37 trenching, digging, grubbing, excavating or otherwise moving soil or other

1 natural material that comprises the surface and subsurface of a parcel of
2 land to the extent that such activity could potentially impact cultural or
3 natural resources as determined by the director.

4 "HRS" means the Hawaii Revised Statutes, as amended.

5 "Lot" means a designated parcel, tract, or area of land established
6 by subdivision or as otherwise established prior to the adoption of
7 subdivision laws.

8 "Irregularly shaped lot" means a flag lot, triangular parcel, lot
9 bordered by ocean on two or more sides, headland, or peninsula.

10 "Makai" means seaward.

11 "Mauka" means inland.

12 "Minimum buildable depth" means the minimum depth that a
13 structure may be constructed taken from a line running makai of and
14 parallel to the frontyard or most landward setback, not to exceed [thirty-
15 five] forty feet in length.

16 "Minor activity" means an activity that does not adversely impact the
17 existing grade of the setback area and shall be limited to activities related
18 to landscaping, minor clearing (grubbing) of vegetation, and minor grading
19 which is not subject to HRS chapter 343.

20 "Minor structure" means the following:

21 (1) a [man-made] structure that costs less than [\$125,000,]
22 \$250,000, does not impede the natural movement of the shoreline, and
23 does not significantly alter the existing grade of the shoreline [setback]
24 area, [and may include but not be limited to:]including the following:

25 (A) landscape features[(i.e.,)such as barbecues, lighting, benches,
26 chairs, borders, wooden trellis, fences, railings, bird feeders,
27 signs, and safety improvements[, etc.]];

28 (B) [movable/portable] movable or portable lifeguard
29 stands;[portable or movable walkways for public access;]

30 (C) landscaping and drywells in conjunction with irrigation
31 systems;

32 (D) irrigation systems, provided they are directed away from and
33 do not result in impermissible encumbrances to the shoreline;

34 (E) outdoor shower and water faucets;[utility poles and accessory
35 structures along existing corridors;] and

36 (F) temporary tents for special events not exceeding fourteen
37 consecutive days in duration during any three-month period;

38 (2) portable or movable walkways for public access, such as
39 wooden or composite boardwalks or dune walkovers. or structures

1 providing access that primarily benefit the public, as determined by the
2 director,

3 A minor structure shall not include a pool, spa, gazebo, fence [car
4 port], carport, garage, or [similarly-massed structures] a similarly massed
5 structure of a permanent nature.

6 “Nonconforming structure/activity, lawful” means a structure or
7 activity which was lawfully existing within the shoreline area and which:

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

9 (2) Received either a building permit, board approval, or shoreline
10 area variance prior to June 16, 1989; or

11 (3) Was outside the shoreline area when it received either a
12 building permit or board approval.

13 “Nonstructural improvement” is any improvement which does not
14 involve load-bearing components essential to the stability of any part of
15 the structure. Nonstructural improvements may include, but are not
16 limited to, window or door replacement or additions, reroofing, storage
17 sheds, fencing, signage, low impact development parking lot
18 improvements, addition of solar panels that do not significantly alter
19 building height or previously developed land area, or other activities that
20 do not affect the integrity of a structure as defined in HRS 205A-22.

21 [“Overlay” means the more mauka (landward) segments of each line,
22 in circumstances where the methods of calculating the shoreline setback
23 line result in two lines that intersect with each other.]

24 [“Plan” means a detailed construction plan drawn to scale that
25 shows the design of a structure proposed to be built within the shoreline
26 area. The plan shall include but not be limited to:

27 (1) Property boundaries;

28 (2) Natural features such as large trees, rock outcroppings;

29 (3) Topography in and around the proposed construction; and

30 (4) Any other information which identifies the existing condition
31 of the subject parcel of land.

32 The director may require that the plan include an accurate
33 instrument survey of the lot as well as cross sections of the lot at
34 designated locations to be prepared by a surveyor licensed in the State of
35 Hawaii.]

36 “Qualified demolition” means the demolition of a structure or
37 structures where such demolition:

38 (1) Will not adversely affect beach processes;

39 (2) Will not artificially fix the shoreline;

1 (3) Will not interfere with public access, except for public safety
2 reasons during demolition operations;

3 (4) Will not interfere with public views to and along the shoreline,
4 except during demolition operations;

5 (5) Will be consistent with:

6 (A) [Section 12-203-2(5) that states that the quality of
7 scenic and open space resources should be protected, preserved and,
8 where desirable, restored;] The purpose of these rules; and

9 (B) Section 205A-2(c)(3)(C), HRS, which states that an
10 objective and policy of the coastal zone management program is to
11 preserve, maintain, and, where desirable, improve and restore shoreline
12 open space and scenic resources; and

13 (6) Will comply with:

14 (A) Chapter 19.62, Maui County Code, relating to flood
15 hazard areas;

16 (B) Chapter 20.08, Maui County Code, relating to soil
17 erosion and sedimentation control; and

18 (C) Chapter 6E, HRS, relating to historic preservation.

19 "Reconstruction" means rebuilding more than 75 percent of an
20 entire structure as measured by either the floor area or current valuation.

21 "Renovation" means the remodel, update, or upgrade of a structure
22 that does not increase existing height or floor area and is not
23 reconstruction.

24 "Repair" means the fixing or replacing of any part of an existing
25 structure for the purpose of its maintenance, or renewal of surface
26 treatments such as painting, carpeting, or exterior siding with
27 substantially similar use of materials and location, but does not include
28 expansion of use or intensity, reconstruction or renovation.

29 "Restaurant dining area" means an outdoor seating area that
30 includes movable tables and chairs, and may include movable umbrellas,
31 for customers of a restaurant where food or beverages are served and
32 consumed; this does not include a bar, kitchen or other facility where food
33 or beverages are prepared.

34 "Sand" means particles of mineralogic or rock material ranging in
35 diameter from 0.0625 millimeters to 2 millimeters that shall be
36 substantially clean of rubble and debris; shall contain no more than fifteen
37 percent volume of silt which ranges in diameter from 0.039 millimeters to

1 0.0625 millimeters and clay which ranges in diameter from 0.00006
2 millimeters to .0039 millimeters; and shall not consist of artificially
3 crushed coral as defined by chapter 20.08, Maui County Code. Additional
4 provisions on quality, such as for dune or beach restoration purposes, may
5 be required.

6 “Sea Level Rise Exposure Area” (SLR-XA) means the area mapped
7 and otherwise used in peer-reviewed literature such as the Hawaii Climate
8 Change Mitigation and Adaptation Commission’s 2017 Hawaii Sea Level
9 Rise Vulnerability and Adaptation Report or its most current iteration, as
10 accessible within the Hawaii Sea Level Rise Viewer hosted by the Pacific
11 Islands Ocean Observing System, and as may be updated to reflect best
12 available science.

13 "Shoreline", as defined in HRS [205A,] section 205A-1 as amended,
14 means the upper reaches of the wash of the waves, other than storm and
15 seismic waves, at high tide during the season of the year in which the
16 highest wash of the waves occurs, usually evidenced by the edge of natural
17 rather than artificially induced vegetation growth, or the upper limit of
18 debris left by the wash of the waves [which] that has been certified by the
19 board of land and natural resources for a duration determined by the
20 board.

21 "Shoreline area" as defined in HRS section 205A-41, as amended,
22 means all of the land area between the shoreline and the shoreline setback
23 line, and may include the area between mean sea level and the shoreline,
24 provided that if the highest annual wash of the waves is fixed or
25 significantly affected by a structure that has not received all permits and
26 approvals required by law or if any part of any structure in violation of this
27 part extends seaward of the shoreline, then "shoreline area" shall include
28 the entire structure.

29 “Shoreline hardening” means structures that block or significantly
30 inhibit landward movement of the shoreline and are used to protect
31 structures or other features from erosion and other coastal hazards, to
32 include seawalls, revetments, riprap, and bulkheads. Shoreline hardening
33 does not include beach stabilizing structures, such as groins and
34 breakwaters, designed by a professional engineer to stabilize a sandy
35 beach along an eroding shoreline.

36 "Shoreline processes" means the natural flow of the ocean which
37 affect the movement of the shoreline area or lands bordering the ocean,

1 including submerged lands.

2 ["Shoreline setback area" or "shoreline area" means "shoreline area"
3 as defined in HRS chapter 205A, as amended, which includes all of the
4 land area between the shoreline and the shoreline setback line, provided
5 that if the highest annual wash of the waves is fixed or significantly
6 affected by a structure that has not received all permits and approvals
7 required by law or if any part of any structure in violation of this part
8 extends seaward of the shoreline, then the term "shoreline area" or
9 "shoreline setback area" shall include the entire structure.]

10 "Shoreline setback line" means that line, as defined in HRS[205A]
11 section 205A-41, as amended, running inland from and parallel to the
12 shoreline at a horizontal plane.

13 "Significant effect" means the sum of effects on the quality of the
14 environment, including actions that irrevocably commit a natural
15 resource, curtail the range of beneficial uses of the environment, are
16 contrary to the County's or State's environmental policies or long-term
17 environmental goals as established by law, or adversely affect the
18 economic welfare, social welfare, or cultural practices of the community.

19 "Structural improvement" means any improvement that involves
20 load-bearing components essential to the stability of the structure and
21 that does not exceed \$500,000 in valuation.

22 "Structure" includes, as defined in HRS section 205A-41, as
23 amended, [but is not limited to,] any portion of any building, pavement,
24 road, pipe, flume, utility line, fence, groin, wall, or revetment. [Eff
25 11/27/03] (Auth: HRS §§205A-43, 205A-45, 205A-49; Maui County
26 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-22, 205A-
27 41)

28
29 **§12-203-5 Severability.** If any provision or part of this chapter or
30 the application thereof to any person or circumstance is held invalid, the
31 invalidity shall not affect other provisions or application of this chapter
32 which can be given effect without the invalid provision or application, and
33 to this end the provisions of this chapter are declared to be severable. [Eff
34 11/27/03] (Auth: HRS Chapter 205A, Parts ,I and III; Maui County
35 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-
36 43.5, 205A-43.6, 205A-45, 205A-49)

SUBCHAPTER 2

SHORELINE SETBACK LINES; SHORELINE AREA

§12-203-6 Establishment of shoreline setback lines. (a) All lots shall have a shoreline setback line that is [the greater of the distances from the shoreline as calculated under the methods listed below or the overlay of such distances:] specific to each lot and established as follows:

[(1) Twenty-five feet plus a distance of fifty times the annual erosion hazard rate from the shoreline;

(2) Based on the lots depth as follows:

(A) A lot with an average lot depth of one hundred feet or less shall have a shoreline setback line twenty-five feet from the shoreline;

(B) A lot 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;

(C) A lot with an average lot depth of one hundred sixty feet or more shall have a shoreline setback line located at a distance from the shoreline equal to twenty-five percent of the average lot depth, but not more than one hundred fifty feet

(3) For irregularly shaped lots, or where cliffs, bluffs, or other topographic features inhibit the safe measurement of boundaries and/or the shoreline, the shoreline setback line will be equivalent to twenty-five percent of the lot's depth as determined by the director, to a maximum of one hundred fifty feet from the shoreline.]

(1) For areas where the erosion hazard line is mapped, the shoreline setback line is measured using the same distance used to map the erosion hazard line at the transect or transects applicable to the lot, plus forty feet. The shoreline setback shall be mapped by the department.

(A) An applicant may choose to obtain a shoreline certification pursuant to HAR 13-222, in which case the setback line will be established by applying the distance used to map the erosion hazard line, plus forty feet, from the certified

- 1 shoreline.
- 2 (B) For areas where the erosion hazard line is mapped and where
- 3 a shoreline is accreting or where known geologic information
- 4 indicates a rock formation that is erosion resistant, as
- 5 determined by the director, the shoreline setback line shall be
- 6 established pursuant to 12-203-6(a)(2).
- 7 (2) For areas where there is no mapped erosion hazard line, the
- 8 shoreline setback line shall be two hundred feet from the shoreline
- 9 as mapped by the department, except that:
- 10 (A) If the shoreline is established by a certified shoreline survey,
- 11 then the shoreline setback line shall be calculated based on
- 12 the lot's depth as follows:
- 13 (i) A lot that is not an irregularly shaped lot and that has an
- 14 average lot depth of one hundred sixty feet or less shall have
- 15 a shoreline setback line forty feet from the shoreline;
- 16 (ii) A lot that is not an irregularly shaped lot and that has
- 17 an average lot depth of more than one hundred sixty feet shall
- 18 have a shoreline setback line located at a distance from the
- 19 shoreline equal to twenty-five percent of the average lot depth,
- 20 but not more than one hundred fifty feet;
- 21 (iii) For irregularly shaped lots, the shoreline setback line
- 22 will be the greater of forty feet or twenty-five percent of the
- 23 lot's depth between its front lot line and rear lot lines as
- 24 measured perpendicularly from the shoreline, to a maximum
- 25 of one hundred fifty feet from the shoreline.
- 26 (B) In areas where the safe conduct of a certified shoreline survey
- 27 would be inhibited by cliffs, bluffs, or other topographic
- 28 features and where the shoreline is fixed by such features, the
- 29 shoreline setback shall be forty feet as measured from the top
- 30 of a cliff or bluff, all as determined by the director
- 31 (C) In areas where the safe conduct of a certified shoreline survey
- 32 would be inhibited by cliffs, bluffs, or other topographic
- 33 features and where the shoreline is not fixed by such features,
- 34 the shoreline setback shall be the greater of forty feet or
- 35 twenty-five percent of the lot's lot depth between its front lot
- 36 line and rear lot lines as measured perpendicularly from the
- 37 shoreline, to a maximum of one hundred fifty feet from the

1 approximate shoreline as mapped by the department.

2
3 (b) Notwithstanding any provision of this section to the contrary, any
4 structures and activities not otherwise allowed under these rules may be
5 built and carried out within [a lot shall have a shoreline setback line at a
6 distance from the shoreline that provides for the] a lot's minimum
7 buildable depth; provided that, in no case shall [the shoreline setback line]
8 such structures and activities be located less than [twenty-five] forty feet
9 from the shoreline. Any approval granted under this section shall include
10 conditions that the owner of the property shall not implement measures
11 that result in shoreline hardening and that conditions of approval shall be
12 recorded with the Bureau of Conveyances (OP/staff).

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

17 (d) Applications submitted before and up to 180 days of the adoption
18 of the amendments to this section shall be subject to this section, or the
19 applicant may choose to be subject to the provisions in effect prior to the
20 adoption of these amendments (OP).

21
22 **§12-203-7 Request for [a shoreline setback determination or an**
23 **annual erosion hazard rate amendment.] an amendment to a**
24 **shoreline setback line established by the erosion hazard line or the**
25 **approximate shoreline mapped by the department.** (a) A request for[a
26 shoreline setback determination or an annual erosion hazard rate
27 amendment] an amendment to a shoreline setback line established by the
28 erosion hazard line or the approximate shoreline mapped by the
29 department shall be submitted to the department on a form prescribed by
30 the director and shall be accompanied by applicable information to assist
31 in the [determination,] consideration of the request, which could include
32 [but not be limited to] a certified shoreline survey; ~~construction~~
33 development plans, if any; existing and finish contours; photographs of
34 the shoreline [setback] area; written [reasons] justification addressing
35 compliance with the criteria set forth in these rules; and analysis of coastal
36 erosion and shoreline processes. The director shall approve, approve with
37 conditions, or deny a request for a shoreline setback [determination] line

1 amendment in accordance with [the criteria set forth in] these rules. The
2 director shall transmit any request for [an annual erosion hazard rate] a
3 shoreline setback line amendment with all relevant information to
4 appropriate agencies for review and comment. Upon consultation with
5 various agencies, the director shall approve or approve with conditions, a
6 request for [an annual erosion hazard rate] a shoreline setback line
7 amendment if the director finds that based on clear and convincing
8 evidence the best parcel-specific [estimate of historical shoreline change
9 differs from the established rate.] setback differs from the setback
10 established by the erosion hazard line. The director shall take action on
11 any application for [an annual erosion hazard rate] a shoreline setback
12 line amendment within thirty days from the date final agency comments
13 are received and the application is deemed complete by the director.

14 (b) The director shall notify the commission, at the commission's
15 next regularly scheduled meeting, of any [application for, or] issuance of[,]
16 a shoreline setback [determination or annual erosion hazard
17 rate]amendment, receipt of which shall be acknowledged by the
18 commission. Such notification shall include [, but not be limited to,] the
19 name of each applicant, the location and purpose of the development, if
20 any, and the shoreline setback[determination.] line amendment. [Eff
21 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County
22 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

23
24 **§12-203-8 Determination of the shoreline.**[(a)] The shoreline
25 shall be established and certified in accordance with the procedures
26 prescribed by the board of land and natural resources; provided that, no
27 determination of a shoreline shall be valid for a period longer than the
28 duration established by the board of land and natural resources, except
29 for those portions of the shoreline which are fixed by naturally stable
30 geologic features that are not eroding as determined by the director [man-
31 made structures, which have been approved by appropriate government
32 agencies, and for which engineering drawings exist to locate the interface
33 between the shoreline and the structure]. The director may require an
34 applicant for any activity in the shoreline area to provide a certified
35 shoreline survey. [Eff 11/27/03] (Auth: HRS §205A-42; Maui County
36 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-42, 205A-43, 205A-43.6,
37 205A-45)

1
2 **§12-203-9 Site plans.** Unless otherwise required by the director,
3 all site plans showing the location of the shoreline and shoreline setback
4 line of a lot shall:

5 (1) Be drawn to the scale of 1"=20'0";

6 (2) Show the shoreline, existing site conditions including human-
7 caused and natural features such as large trees, rock outcroppings, or
8 other known sensitive environmental areas such as special flood hazard
9 area, coastal dune, tsunami zone, erosion hazard line within the parcel,
10 3.2-foot sea level rise exposure area, wetland, streams, estuary or
11 geologically hazardous land, and existing conditions along properties
12 immediately adjacent to the subject lot; and

13 (3) Show contours at a minimum interval of two feet.[]; and

14 (4) Show all natural and man-made features in the subject area.]
15 [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County
16 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-45)

17
18 **§12-203-10 Structures and activities subject to these rules;**
19 **exceptions.** All structures and activities located or proposed to be located
20 within the shoreline area including subdivisions shall be subject to these
21 rules and conform to the requirements of this chapter. Other than the
22 following exceptions, [The] the requirements of this chapter shall not
23 abrogate the requirements of any other applicable statutes, codes,
24 ordinances, rules and regulations, or other law. Construction immediately
25 inland of the shoreline area shall also be subject to these rules until a
26 certified and confirmed survey map, prepared in accordance with the
27 provisions of section 12-203-8 herein, is filed with the department.

28 The following actions are not subject to these rules and do not
29 require approval pursuant to section 12-203-13 (OP), except that those
30 who propose any use, activity, or operation pursuant to subsections g, h,
31 i, j, and k below in the shoreline area must complete a declaration form as
32 provided by the department and made accessible to the public, that may
33 establish action-specific Best Management Practices and other
34 appropriate restrictions:

35 (a) Transfer of land title; creation or termination of easements,
36 covenants, or other rights in structure or land that do not impair shoreline
37 access;

1 (b) Normal and customary agricultural activities on land
2 currently or historically used for such activities, provided that appropriate
3 best management practices to control or minimize pesticide and sediment
4 runoff are implemented to minimize impacts to nearshore waters;

5 (c) Changes in uses or operations, including changes between
6 short-term and long-term occupancy of dwelling units and various uses of
7 beach parks that are under county or state jurisdiction, that do not
8 increase the density or intensity of use as determined by the director.
9 Increases in the density or intensity of use can be demonstrated by
10 increased off-street parking requirements pursuant to Title 19, Maui
11 County Code or increased storage needs;

12 (d) Archaeological, geophysical, percolation, engineering, soils,
13 and other scientific testing conducted by a licensed archaeological or
14 scientific professional involving temporary excavation limited to the
15 minimum extent determined necessary and appropriate or as approved by
16 the State Historic Preservation Division, and employing best management
17 practices protective of the environment and natural and cultural
18 resources;

19 (e) Traditional native Hawaiian cultural practices that are
20 conducted or led by native Hawaiian cultural practitioners and that do not
21 negatively impact the shoreline area; this includes protection and
22 stabilization of iwi kupuna using best management practices.

23 (f) During the applicable timeframe of a Governor's or Mayor's
24 disaster or emergency declaration or proclamation, while required permits
25 are obtained and while using Best Management Practices:

26 (i) the removal and disposal of disaster debris that does not
27 expand the area of disturbance; emergency structure
28 stabilization and control erosion and runoff;

29 (ii) emergency repairs to roofs and windows that do not expand the
30 footprint or use of the habitable structure while required
31 permits are obtained;

32 (iii) emergency installation of protective measures to protect
33 habitable structures provided such measures are temporary
34 and limited in scale.

35 (g) Nonstructural interior maintenance, repairs, and renovations
36 to existing, lawfully established structures that involve no expansion, no
37 ground disturbance, and do not increase the density or intensity of use,

1 such as paint, floors, carpets, cabinets, and interior walls and doors,
2 limited to a cumulative valuation of less than \$500,000 in any 24-month
3 period for a single ownership on a single lot or set of lots composing a
4 unified building site, provided a declaration is filed with the department.
5 Increases in the density or intensity of use can be demonstrated by
6 increased off-street parking requirements pursuant to Title 19, Maui
7 County Code, increased storage needs, or other effects as determined by
8 the director;

9 (h) Nonstructural exterior maintenance, repairs, and renovations
10 to existing, lawfully established structures that involve no ground
11 disturbance, such as doors, windows, shutters, siding, roof repairs or
12 replacement and, for structures erected in 1981 or after, to protect against
13 impacts from lead-based paint, painting with related preparatory work,
14 limited to a cumulative valuation of less than \$500,000 in any 24-month
15 period for a single ownership on a single lot or set of lots composing a
16 unified building site, provided a declaration is filed with the department;

17 (i) Operation and maintenance activities for existing public
18 roadways and drainage systems, subject to approval by the applicable
19 state or county agency, such as vegetation management activities,
20 including tree trimming and cutting and vegetation removal, and clearing
21 obstructions including beach sand accumulations that block publicly-
22 owned drainage ways, provided that beach sand is placed on adjacent
23 beaches or dunes, and the obstruction consists solely of beach sand that
24 is removed to the minimum volume and depth necessary to allow for
25 passage of flood waters, and including roadway pavement patching, repair,
26 restriping and grooving but not including resealing, resurfacing or
27 reconstruction, and provided a declaration is filed with the department.

28 (j) With the application of best management practices to protect
29 the marine and land environment, emergency protection of water,
30 wastewater or stormwater infrastructure managed by the Department of
31 Water Supply, Department of Environmental Management, or the
32 Department of Public Works when such infrastructure at imminent risk of
33 failure which would substantially affect public health or safety, including
34 significant water loss, or contamination of surface water, land, or water
35 supply, provided a declaration is filed with the department.

1 (k) Patching, repairs, and resurfacing of existing driveways and
2 parking lots less than 1,000 square feet provided a declaration is filed with
3 the department.

4
5 **§12-203-11 Prohibited activities within the shoreline area.** The
6 mining or taking of sand, dead coral or coral rubble, rocks, soil, or other
7 beach or marine deposits from the shoreline area is prohibited with the
8 following exceptions:

9 (1) Where the mining or taking is authorized by a variance
10 pursuant to these rules; or

11 (2) The clearing of these materials from existing drainage pipes
12 and canals and from the mouths of streams including clearing for the
13 purposes under HRS section 46-11.5; provided that, the sand is removed
14 to the minimum volume and depth necessary to allow for passage of flood
15 waters and shall be placed on adjacent areas unless such placement would
16 result in significant turbidity or would otherwise be detrimental to the
17 shoreline environment; or

18 (3) The cleaning of the shoreline area for state or county
19 maintenance purposes, including the clearing of seaweed, limu, and debris
20 under HRS section 46-12; provided that, the sand removed shall be placed
21 on adjacent areas unless the placement would result in significant
22 turbidity or would otherwise be detrimental to the shoreline environment.
23 [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County
24 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§46-11.5, 46-12, 205A-43.6, 205A-
25 44, 205A-45)

26
27 **§12-203-12 [Permitted] Allowable structures and activities**
28 **within the shoreline [setback] area.**

29 (a) The following structures and activities [are] may be permitted in
30 the shoreline [setback] area subject to the application and approval
31 procedures pursuant to section 12-203-13:

32 (1) Existing lawful nonconforming [structures/activities.]
33 structures or activities.

34 (2) A structure or activity that received a shoreline variance or
35 administrative approval from the director prior to the adoption
36 of these rules provided [.] Said] the variance [/] or approval [be]
37 remains valid.

- 1 (3) A structure or activity that is necessary for, or ancillary to,
2 continuation of agriculture or aquaculture existing in the
3 shoreline [setback] area on June 16, 1989.
- 4 (4) A structure or activity that consists of maintenance, repair,
5 [reconstruction,] and minor additions or alterations of legal
6 boating, maritime, or water sports recreational facilities,
7 [which are publically owned,] and Hawaiian fishponds, and
8 [which result] that results in no interference with natural
9 beach processes; provided that the permitted structure may
10 be repaired, but shall not be enlarged within the shoreline
11 [setback] area without a variance.
- 12 (5) [A structure, excluding those defined as lawful
13 nonconforming, that received a written governmental approval
14 and is the subject of repairs] Repairs to a lawful conforming
15 structure, or repairs to a lawful nonconforming structure that
16 is situated entirely mauka of the sea level rise exposure area
17 on nonerodable land as determined by the director, provided
18 that:
- 19 (A) The repairs are valued by a licensed professional
20 engineer or architect at less than 50[fifty] percent of the
21 current replacement cost of the structure;
- 22 (B) The repairs do not enlarge or expand the structure, nor
23 intensify the structure's use; and
- 24 (C) The repairs are permitted by the building code, flood
25 hazard regulations, and special management area law.
- 26
- 27 (6) Repairs to a structure that became lawful nonconforming
28 upon DATE OF ADOPTION, provided that:
- MPC to
decide
percentage
- 34 (A) The repairs are valued by a licensed professional
35 engineer or architect at less than 10 or 20 percent of the
36 current replacement cost of the structure;
- (B) The repairs do not enlarge or expand the structure, nor
intensify the structure's use; and
- (C) The repairs are permitted by the building code, flood
hazard regulations, and special management area
requirements.

OPTION A: Most restrictive - no structures can rebuild if damaged by coastal hazards

~~[(6)]~~(7) Repairs to a lawful nonconforming structure in a manner that is proportional and directly related to [damaged] damage by fire, insects, accidental means, or other calamity, provided that:

(A) The structure was not damaged by coastal hazards;

~~[(6)]~~7 Repairs to a lawful nonconforming structure in a manner that is proportional and directly related to [damaged] damage by fire, insects, natural disaster, accidental means, or other calamity, provided that:

(A) The structure was outside the shoreline area when it received a building permit or board approval and was not damaged by coastal hazards beyond 50 percent of its replacement value, or the structure was inside the shoreline area when it received a building permit and was not damaged by coastal hazards.

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

(C) The repairs shall also be permitted by the building code, flood hazard regulations, and special management area law; [and]

(D) The repairs shall be started within two years from the date of the damage, and before construction can commence, be accompanied by a plan for mitigation to protect from subsequent similar damage, approved by the department;

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

(F) Any approval granted under this section shall include conditions that the owner of the property shall not implement measures that result in shoreline hardening and that conditions of approval shall be recorded with

OPTION B: structures in new setbacks can rebuild if damaged by coastal hazards up to 50% of building value

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The existing and new criteria B-G will apply to (7), regardless of which OPTION is adopted.

36

- 1 the Bureau of Conveyances;
2 (G) This subsection shall not apply to critical public
3 infrastructure such as waterlines, wastewater lines,
4 drainage systems, and roadways where it is
5 demonstrated that repairs are necessary to system
6 functionality and relocation or retreat is not viable
7 (DPW).
- 8 (8) Lawfully constructed shoreline hardening structures that are
9 deemed by the director to be critical to protecting a habitable
10 structure or public infrastructure may be repaired or
11 maintained with like-for-like materials (OCCL) up to 50
12 percent of its replacement value; otherwise, the structure
13 shall not be repaired and shall be demolished and removed.
14 The applicant shall provide a professionally certified
15 construction estimate to demonstrate the replacement value
16 of the structure, along with its size and dimensions, and
17 documentation or evidence of the structure being lawfully
18 nonconforming. The repairs or maintenance shall not
19 substantially exceed the size, height or density of the original
20 structure and shall implement BMPs as determined by the
21 director;
- 22 [(7)](9) Qualified demolition;
23 [(8)](10) [Beach nourishment/dune restoration] Beach-nourishment,
24 dune-restoration, sand-pushing, and coastal revegetation
25 projects approved by all applicable governmental agencies;
- 26 [(9)](11) A structure or activity that has been determined by the
27 director to be a minor structure or minor activity within the
28 shoreline [setback] area [which] that does not adversely affect
29 beach processes, does not artificially fix the shoreline, and
30 does not interfere with public access or public views to and
31 along the shoreline and which meets the purpose of this
32 chapter[, HRS chapter 205A, as amended, and chapter 19.62,
33 Maui County Code, relating to coastal high hazard districts.],
34 the building code, flood hazard regulations, and special
35 management area requirements;
- 36 (12) Adaptation of existing lawful or lawful nonconforming
37 structures in response to their location within SLRXA,

- 1 including relocation of a structure mauka of the SLRXA,
2 reducing the size of a structure, elevating a structure within
3 the existing footprint;
- 4 ~~[(10)]~~(13) [Emergency protection of an imminently threatened legally
5 habitable structure, or infrastructure at imminent risk of
6 failure which would substantially affect public health or
7 safety, provided that:
8 (A) The protection is temporary and is removed within one
9 hundred eighty calendar (180) days of installation;
10 (B) The protection receives approval in accordance with
11 section 12-202-16, special management area rules of the
12 Maui planning commission; and
13 (C) Given the significance of the emergency, the protection
14 is the best management alternative in relation to beach,
15 shoreline, and coastal resource conservation.]
16 Activities that have received a special management area
17 emergency permit pursuant to section 12-202-16 of the
18 special management area rules for the Maui planning
19 commission;
- 20 (14) Nonstructural single-story enclosures of existing, lawfully
21 established roofed residential lanais, decks, patios, balconies,
22 carports, or similar structures that are accessory to single-
23 family dwellings and multi-family dwellings and that are
24 included in the definition of “floor area” in Title 19 of the Maui
25 County Code;
- 26 (15) On private property, one temporary event and its signage,
27 such as a fundraiser, community event, festival, fair, luau,
28 canoe regatta, surf meet, and family celebration, occurring not
29 more than once in a thirty-day period, limited to ninety-six
30 hours including setup and takedown, involving no new
31 ground altering activity, and having no significant impact on
32 public access to beach and ocean recreational areas; on public
33 property, such temporary events and signage under a county
34 or state permitting authority;
- 35 (16) Repair, construction, or reconstruction of critical public
36 infrastructure beyond the activities allowed pursuant to
37 section 12-203-10;

- 1 (17) Utility poles, tsunami sirens built to approved standard
2 specifications, and accessory utility structures along existing
3 utility corridors;
- 4 (18) Uses and structures established pursuant to section 12-203-
5 6(b);
- 6 (19) Additions and alterations of structures, or intensification of
7 use, when the director has determined that they involve only
8 existing lawful structures and uses to which they are
9 subordinate and which are protected for their useful life by
10 being located mauka of public facilities that are protected by
11 shoreline hardening or natural features not subject to erosion,
12 or the director determines that alterations will elevate the
13 entire structure to be adequately protected for its useful life;
- 14 (20) For areas protected by beach nourishment, new non-
15 habitable structures and uses within forty feet immediately
16 makai of a lot's minimum buildable depth, that are accessory
17 to lawful structures and uses and that will be protected for
18 their useful life by being located mauka of shorelines
19 protected by beach nourishment. Any approval granted under
20 this section shall include conditions that the owner of the
21 property shall not implement measures that result in
22 shoreline hardening and that conditions of approval shall be
23 recorded with the Bureau of Conveyances;
- 24 (21) Structures, such as wooden dune walkovers, that will
25 enhance either vertical or lateral public shoreline access
26 provided that they do not adversely affect beach processes,
27 artificially fix the shoreline, or interfere with public access or
28 public views to and along the shoreline;
- 29 (22) Exterior installation on and maintenance, repairs, and
30 renovations to existing, lawfully established structures that
31 involve no ground disturbance and that are nonstructural,
32 such as signage, wireless antennae and other transmission
33 equipment, satellite dishes, and roof mounted equipment,
34 such as photovoltaic and solar panels;
- 35 (23) Patching, repairs, and resurfacing of existing driveways and
36 parking lots greater than 1,000 square feet, including low
37 impact development features as detailed in Hawaii's Low

- 1 Impact Development Guide or other guidance where
2 appropriate;
- 3 (24) When associated with an existing lawful structure, site
4 improvements, involving limited ground disturbance, such as
5 installation of turf, shallow landscaping, irrigation, and
6 manual invasive species control that does not use herbicides
7 and does not involve grubbing or earth moving, installation of
8 permeable pavement, and replacement of asphalt or concrete
9 slabs and driveways;
- 10 (25) When associated with an existing lawful structure, site
11 improvements, involving limited ground disturbance such as
12 the installation, removal, or maintenance of trees and shrubs
13 and landscaping management plan implementation, utility
14 pedestals, ground signs, water, sewer, and conduit lines, walls
15 and fences up to four feet in height, telephone and light poles,
16 mailbox posts, and solar panels, provided that that this does
17 not include new wireless telecommunications towers,
18 windmills and wind turbines;
- 19 (26) Subdivisions in the shoreline area which ensure proposed
20 development will be placed mauka of the shoreline setback
21 line and allow for a minimum buildable area for all subdivided
22 lots and which provide public shoreline access;
- 23 (27) Restaurant dining areas that do not exceed a total of 2,000
24 square feet within the established shoreline setback area per
25 restaurant. Such use shall involve no ground-altering activity;
26 shall not impede the natural movement of the shoreline,
27 dunes, or vegetation; shall not impede public shoreline access
28 or existing walkways; and shall be removed upon imminent
29 threat of erosion, storm impact, or other anticipated hazard
30 or calamity;
- 31 (b) All structures and activities not specifically permitted in this
32 section are prohibited.
- 33 (c) If any new structures are proposed to be located within the
34 shoreline [setback] area, the following restrictions shall apply:
- 35 (1) All new structures shall be elevated on pilings or columns, in
36 accordance with the standards for development in chapter
37 19.62, Maui County Code, relating to coastal high hazard

- 1 districts, so that the lowest horizontal portion of the structural
2 members of the lowest floor is elevated above the base flood
3 elevation, or above existing grade, whichever is greater.
- 4 (2) The applicant, its successors, and permitted assigns shall
5 defend, indemnify, and hold the County of Maui harmless
6 from and against any and all loss, liability, claim or demand
7 arising out of damages to said structures or activities from
8 coastal natural hazards and coastal erosion.
- 9 (3) The construction of shoreline hardening structures or
10 activities shall be prohibited throughout the life of the
11 structure or activity.

12 The requirements of subsections (c)(2) and (c)(3) shall run with the
13 land and shall be set forth in a unilateral agreement recorded by the
14 applicant with the bureau of conveyances or land court prior to the date
15 of approval of all structures or activities. A copy of the recorded unilateral
16 agreement shall be filed with the director and the director of public works.

17 (d) Minor structures or activities shall be completed or operating
18 within one year from the later of the date of the department's
19 determination or the date of approval of the last discretionary permit.

20 [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui
21 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44,
22 205A-45; MCC Chapter 19.62)

23
24 **§12-203-12.5 Abandoned or eroded structures.** So that the
25 structure does not become a hazard or threat to the public health, safety
26 or welfare, or to cultural or natural resources, if a structure in the
27 shoreline area is eroded or abandoned, the property owner must apply for
28 a qualified demolition pursuant to §12-203-12(a)(7) within 180 days; the
29 property owner must initiate demolition within 180 days of approval and
30 must complete demolition within 180 days of initiation, unless additional
31 time is approved by the director.

32
33 **§12-203-13 Request for [a determination of] approval of**
34 **structures and activities in the shoreline [setback] area.** (a) [All]Other
35 than the exceptions listed in §12-203-10, all proposed structures and
36 activities in the shoreline [setback] area shall be subject to an assessment
37 made by the director.

1 A request for approval of structures and activities in the shoreline
2 [setback] area shall be submitted to the department on a form prescribed
3 by the director and shall be accompanied by applicable information to
4 assist in the assessment, which may include, but not be limited to; a
5 certified shoreline survey; construction plans; a list of proposed plants and
6 their growth at maturation; existing and finish contours; flood zones;
7 topography; proximity to the shoreline; any and all shoreline hardening
8 structures; photographs of the shoreline [setback] area; an environmental
9 assessment; written reasons addressing compliance with the criteria set
10 forth in these rules; and an analysis of coastal erosion rates and shoreline
11 processes. The director shall approve, approve with conditions, or deny
12 such request in accordance with the criteria set forth in these rules, and
13 chapter 12-202 of the special management area rules for the Maui
14 planning commission.

15 (b) The director shall notify the commission, at the commission's
16 next regularly scheduled meeting, of any application for, or issuance of,
17 approval of structures and activities in the shoreline [setback] area, receipt
18 of which shall be acknowledged by the commission. Such notification
19 shall include[, but not be limited to,] the name of each applicant[,]
20 and the location.[and purpose of the development, and the shoreline setback
21 determination.] [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-
22 45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-
23 44, 205A-45)

SUBCHAPTER 3

VARIANCES

1
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5
6 **§12-203-14 Variance application.** (a) A written application for a
7 variance from shoreline setback requirements shall be made in a form
8 prescribed by the director and shall be filed with the director. The
9 application shall include development plans, site plans, photographs, and
10 any other plans, drawings, maps, or information determined by the
11 director to be necessary to evaluate the application. The application shall
12 also include:

- 13 (1) An administrative fee as established in the County budget;
14 (2) Certification from the owner or lessee of the lot [which
15 authorizes] authorizing the application for variance;
16 (3) An environmental assessment or environmental impact
17 statement prepared in accordance with HRS chapter 343, and
18 the environmental impact statement rules and applicable
19 guidelines of the State of Hawaii, or a chapter 343 exemption
20 determination (OP);
21 (4) The names, addresses, and the tax map key identification of
22 owners of real property situated adjacent to and abutting the
23 boundaries of the land on which the proposed use, activity, or
24 operation is to occur;
25 (5) A development plan and site plan of the shoreline [setback]
26 area, drawn to scale; [, showing:
27 (A) Existing natural and man-made features and conditions
28 within the shoreline setback area;
29 (B) Existing natural and man-made features and conditions along
30 properties immediately adjacent to the shoreline setback area
31 and proposed improvements;
32 (C) The certified shoreline and the shoreline setback line;
33 (D) Contours at a minimum interval of two feet unless waived by
34 the director; and
35 (E) Proposed development and improvements showing new
36 conditions;]
37 (6) A copy of the certified shoreline survey of the property;

- 1 (7) Detailed justification of the proposed project[, which] that
2 addresses the purpose and intent of these rules and the
3 criteria for approval of a variance;
- 4 (8) Analysis of historical and anticipated coastal erosion [rates]
5 and coastal processes[;] related to the subject property; and
- 6 (9) Any other information required by the director.
- 7 (b) Upon a determination by the director that the application is
8 complete and in compliance with HRS chapter 205A, part III, and this
9 chapter, the director shall submit the application to the commission. If
10 the application is determined to be incomplete by the director, the director
11 shall return the application to the applicant with a written description
12 identifying the portions of the application determined to be incomplete.
13 The director shall submit a written report, and all relevant documents and
14 information to the commission prior to the matter appearing on an agenda
15 of the commission.
- 16 (c) Except as otherwise provided in this section, all applications
17 for variances shall be heard, noticed, and processed as public hearing
18 matters. Not less than thirty calendar days before the public hearing date,
19 the applicant for a variance shall mail notices of public hearing by certified
20 or registered mail, postage prepaid, to owners of real property [which abut]
21 that abuts or[are] is adjacent to the parcel that is the subject of the
22 application. Not less than thirty days prior to the public hearing date, the
23 director shall publish a notice of public hearing once in a newspaper that
24 is printed and issued at least twice weekly in the County and which is
25 generally circulated throughout the County. The notice shall state the
26 nature of the proposed development, the date, time, and place of the
27 hearing, and all other matters required by law.
- 28 [(d) Exceptions. Prior to action on a variance application, the
29 commission may waive a public hearing on the application for:
- 30 (1) Stabilization of shoreline erosion by the moving of sand
31 entirely on public lands;
- 32 (2) Protection of a legal structure costing more than \$20,000;
33 provided that, the structure is at risk of immediate damage
34 from shoreline erosion;
- 35 (3) Other structures or activities; provided that, no person or
36 agency has requested a public hearing within twenty-five
37 calendar days after public notice of the application. For the
38 purposes of this section "public notice of the application" shall

1 be publication of a notice of the application in a newspaper
2 which is printed and issued at least twice weekly in the
3 County of Maui, which informs the public of the subject
4 matter of the application and which identifies the date and
5 time by which a written request for a public hearing must be
6 received by the commission; or
7 (4) Maintenance, repair, reconstruction, and minor additions or
8 alternations of legal boating, maritime or water sports
9 recreational facilities, which result in little or no interference
10 with natural shoreline processes.]
11 [Eff 11/27/03] (Auth: HRS §§205A-43.5, 205A-46, 343-5; Maui
12 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.5, 205A-46, 343-
13 5)
14

15 **§12-203-15 Criteria for approval of a variance.**

16 (a) A variance may be granted for a structure or activity
17 otherwise prohibited by this chapter, if the commission finds in
18 writing, based on the record presented, that the proposed structure
19 or activity is necessary for or ancillary to:
20 (1) Cultivation of crops;
21 (2) Aquaculture;
22 (3) Landscaping; provided that, the commission finds that
23 the proposed structure or activity will not adversely
24 affect beach processes and will not artificially fix the
25 shoreline;
26 (4) Drainage;
27 (5) Boating, maritime, or water sports recreational
28 facilities;
29 (6) Facilities or improvements by public agencies or public
30 utilities regulated under HRS chapter 269;
31 (7) Private facilities or improvements that are clearly in the
32 public interest;
33 (8) Private facilities or improvements [which] that will [neither]
34 not adversely affect beach processes, result in flanking
35 shoreline erosion (OP), nor artificially fix the shoreline;
36 provided that, the commission also finds that hardship will
37 result to the applicant if the facilities or improvements are not
38 allowed within the shoreline area;

- 1 (9) Private facilities or improvements that may artificially fix the
2 shoreline; provided that, the commission finds that shoreline
3 erosion is likely to cause hardship to the applicant if the
4 facilities or improvements are not allowed within the shoreline
5 area; and provided further that, the commission imposes
6 conditions to prohibit any structure seaward of the existing
7 shoreline unless it is clearly in the public interest, and
8 provided that that the improvements or facilities shall not be
9 in areas with sand beaches or where artificially fixing the
10 shoreline may interfere with existing recreational or waterline
11 activities unless it is clearly in the public interest (OP); or
12 (10) Moving of sand from one location seaward of the shoreline to
13 another location seaward of the shoreline; provided that, the
14 commission also finds that the moving of sand will not
15 adversely affect beach processes, will not diminish the size of
16 the public beach, and will be necessary to stabilize an eroding
17 shoreline.
- 18 (b) A structure or activity may be granted a variance upon
19 grounds of hardship if:
- 20 (1) The applicant would be deprived of reasonable use of the land
21 if required to fully comply with the shoreline [setback] rules;
- 22 (2) The applicant's proposal is due to unique circumstances and
23 does not draw into question the reasonableness of the
24 shoreline [setback] rules; and
- 25 (3) The proposal is the practicable alternative [which] that best
26 conforms to the purpose of [the shoreline setback] these rules.
- 27 (c) Before granting a hardship variance, the commission must
28 determine that the applicant's proposal is a reasonable use of the land.
29 Because of the dynamic nature of the shoreline environment,
30 inappropriate development may easily pose a risk to individuals or to the
31 public health and safety. For this reason, the determination of the
32 reasonableness of the use of land should properly consider factors such
33 as shoreline conditions, erosion, surf and flood conditions, and the
34 geography of the lot.
- 35 (d) For purposes of this section, hardship shall not include:
36 economic hardship to the applicant; [county] County zoning changes,
37 planned development permits, cluster permits, or subdivision approvals

1 after June 16, 1989; any other permit or approval [which] that may have
2 been issued by the commission. If the hardship is a result of actions by
3 the applicant, such result shall not be considered a hardship for purposes
4 of this section.

5 (e) No variance shall be granted unless appropriate conditions
6 are imposed:

7 (1) To maintain and require safe lateral access to and along the
8 shoreline for public use or adequately compensate for its loss;

9 (2) To minimize risk of adverse impacts on beach processes;

10 (3) To minimize risk of structures failing and becoming loose
11 rocks or rubble on public property; [and]

12 (4) To minimize adverse impacts on public views to, from, and
13 along the shoreline. For purposes of this section only,
14 "adversely impacts public views" means the adverse impact on
15 public views and open space resources caused by new
16 building structures exceeding a one-story or thirty-foot height
17 limitation;[and]

18 (5) To comply with chapters 19.62 and 20.08, Maui County Code,
19 relating to flood hazard districts and erosion and
20 sedimentation control respectively;

21 (6) To not implement measures that result in shoreline
22 hardening; and

23 (7) To require that the owner of a lot for which the variance is
24 granted to record these conditions with the Bureau of
25 Conveyances.

26 (f) Notwithstanding any provision of this section to the contrary,
27 the commission may consider granting a variance for the protection of a
28 legal structure or public infrastructure; provided that, the structure is at
29 risk of damage from coastal erosion, poses a danger to the health, safety
30 and welfare of the public, and is the best shoreline management option in
31 accordance with relevant state policy on shoreline hardening.

32 (g) The applicant may apply to the department for an amendment
33 to the variance in a manner consistent with the procedures of section 12-
34 202-17 of the special management area rules of the Maui planning
35 commission. [Eff 11/27/03] (Auth: HRS §205A-43.5, 205A-46; Maui
36 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.5, 205A-46; MCC
37 Chapters 19.62, 20.08)

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SUBCHAPTER 4

ENFORCEMENT; PENALTIES

§12-203-16 Enforcement.(a)The director shall enforce these rules in accordance with HRS chapter 205A. [Eff 11/27/03] (Auth: HRS §205A-43.6; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.6)

(b) Any use, activity, construction, or operation pursuant to these rules and chapter 205A, HRS, as amended, that requires and fails to obtain shoreline approval or a variance, or has failed to comply with conditions established with any such approval, is a violation of these rules and chapter 205A, HRS. The violation shall be corrected by requiring the owner or violator to pay all applicable fines and take the following corrective actions:

- (1) any unpermitted use, activity, or operation has ceased;
- (2) any unpermitted construction has been removed with appropriate permits;
- (3) a shoreline approval or variance has been issued; or
- (4) other means determined by the director have been achieved.

Applicable fines shall accrue until the violation is corrected. No other permit or approval shall be construed as shoreline approval pursuant to this part.

(c) If a portion of a constructed structure is situated within the shoreline area, and the structure has not been authorized with government agency permits required by law, then for purposes of enforcement of this part, the entire structure shall be construed to be entirely within the shoreline area and shall be subject to enforcement accordingly.

(d) Issuance of notice of violation and order.

- (1) The owner shall, and the alleged violator may, be notified by the enforcement agency of an alleged violation of these rules and any approval, variance, or condition issued pursuant thereto. The director shall provide service by at least one of the following methods as the director deems appropriate: certified or registered mail, regular mail with delivery confirmation, personal service, posting on the property, or

1 publishing the notice once per week for three consecutive
2 weeks in a newspaper that is printed and issued at least twice
3 weekly in the County and is generally circulated through the
4 County. The date of service shall be the date on which the
5 certified or registered mail is accepted, the date of regular mail
6 delivery confirmation, the date of personal service, the date of
7 posting on the property, or the date of the last publication in
8 the newspaper. If the director uses more than one method of
9 service, then the date of service shall be the later of the dates
10 of service.

11 (2) The notice of violation and order shall include the specific
12 section of these rules that has been violated; the nature of the
13 violation; and the remedy required or available, including
14 cessation or removal of the violation, subject to applicable
15 permitting requirements; that an initial civil fine be paid not
16 to exceed \$100,000 per violation; that a civil fine be paid not
17 to exceed \$10,000 per day for each day in which the violation
18 persists, unless otherwise required or allowed by statute, in
19 addition to the foregoing and any other penalties; and that the
20 landowner or violator may appeal the notice of violation
21 pursuant to section 12-203-18 within thirty days of the date
22 of service. The filing of an appeal shall not correct or suspend
23 any violation or stay the assessment and accumulation of
24 fines. The following and other applicable and reasonable
25 criteria shall be considered in assessing the initial and daily
26 fines:

27 (A) Previous violations by the same person;

28 (B) The degree of damage to the environment, including
29 damage to the shoreline and marine resources;

30 (C) The degree of cooperation provided by the violator
31 during the investigation;

32 (D) Amount necessary to deter future violations;

33 (E) Evidence of circumstances beyond the control of the
34 violator;

35 (F) Whether the owner or violator knew or should have
36 known that assessments or approvals were required; and

37 (G) The amount of time and resources required by the

1 department to investigate and determine that a violation
2 occurred.

3
4 (3) The department, in consultation with the department of the
5 corporation counsel, may institute a civil action in any court
6 of competent jurisdiction for the enforcement of any
7 settlement agreement or order issued pursuant to this
8 section.

9 (4) Nothing in this section shall prohibit the department, through
10 the corporation counsel, from filing an order or motion directly
11 with a court in the event that public health, safety and welfare
12 may be at risk.

13 ~~(5) Nothing in this section shall prohibit the department from~~
14 ~~issuing a warning to the violator before issuing a notice of~~
15 ~~violation and order.~~ [Eff 1/1/94; am 9/28/97] (Auth: HRS
16 §205A-43, 205A-43.6) (Imp: HRS §43.6)

17
18 **§12-203-17 Penalties.** Any person who violates any provision of
19 these rules shall be subject to the penalties provided for in HRS §205A-32.
20 [Eff 11/27/03] (Auth: HRS §§205A-32, 205A-43.6; Maui County Charter
21 §§8-8.4, 13-2(15)) (Imp: HRS §205A-32)

22 23 24 25 **SUBCHAPTER 5**

26 27 **APPEALS**

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29
30 **§12-203-18 Appeal of director's decision; filing the notice of**
31 **appeal.** Appeal of the director's decision including, but not limited to, the
32 validity of the [annual erosion hazard rate, and] erosion hazard line, and
33 the determination of minor [structures/activities,] structures or activities,
34 may be made to the commission by the filing of a notice of appeal with the
35 department not later than ten days after the receipt of the director's written
36 decision or, where the director's decision is not required by the
37 commission or these rules to be served upon appellant, not later than ten

1 days after the meeting at which the commission received notification of the
2 director's decision. The notice of appeal shall be filed in accordance with
3 section 12-201-20 of the rules of practice and procedure for the Maui
4 planning commission. The department shall notify the commission, at the
5 commission's next regularly scheduled meeting, of the filing of the notice
6 of appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6,
7 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS
8 §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County
9 Charter §§8-8.4, 13-2(15))

10
11 **§12-203-19 Content of the notice of appeal.** The notice of appeal
12 shall identify the party or parties making the appeal in the caption and
13 body of the notice of appeal. The notice of appeal shall designate the
14 decision appealed from and shall state the reasons for the appeal. [Eff
15 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-
16 49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-
17 43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-
18 2(15))

19
20 **§12-203-20 Joint or consolidated appeals.** If two or more parties
21 are entitled to appeal from a decision of the director and their interests are
22 such as to make joinder practicable, they may file a joint notice of appeal
23 and thereafter proceed on appeal as a single appellant. Appeals may be
24 consolidated by order of the commission upon the commission's own
25 motion, upon motion of a party, or upon stipulation of the parties to the
26 several appeals. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-
27 43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp:
28 HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County
29 Charter §§8-8.4, 13-2(15))

30
31 **§12-203-21 Service of the notice of appeal.** If the appellant is
32 someone other than the applicant, appellant shall serve a file-marked copy
33 of the appeal by mail or delivery thereof to counsel of record for each other
34 party, or, if a party is not represented by counsel, to the party at the party's
35 last known address. Proof of service shall be filed with the department
36 within seven days after the filing of the notice of appeal. [Eff 11/27/03]
37 (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui

1 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5,
2 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

3
4 **§12-203-22 Payment of fees.** Upon the filing of any separate or
5 joint notice of appeal, the appellant shall pay such fees as are set forth in
6 the County budget ordinance. [Eff 11/27/03] (Auth: HRS §§205A-43,
7 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4,
8 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-
9 49, Maui County Charter §§8-8.4, 13-2(15))

10
11 **§12-203-23 Contested case hearing on appeal.** The commission
12 shall hold a contested case hearing on the appeal. The director, the
13 appellant, and, where the appellant is someone other than the applicant,
14 the applicant shall be parties to the proceedings. Subchapters 3, 4, and
15 5 of chapter 12-201 of the rules of practice and procedure for the Maui
16 planning commission, relating to petitions to intervene, contested case
17 procedures, and [post hearing] post-hearing procedures, respectively,
18 shall govern the proceedings, except that petitions to intervene on an
19 appeal shall be filed with the commission no later than ten days after the
20 meeting at which the commission received notification of the filing of an
21 appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6,
22 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS
23 §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County
24 Charter §§8-8.4, 13-2(15))

25
26 **§12-203-24 Disposition of appeal.** The commission may affirm the
27 decision of the director, or may reverse or vacate and remand the decision
28 of the director if the substantial rights of the petitioner may have been
29 prejudiced because the decision is:

- 30 (1) Based on clearly erroneous findings of material fact or
31 erroneous application of the law; or
32 (2) Arbitrary or capricious in its application; or
33 (3) A clearly unwarranted abuse of discretion. [Eff 11/27/03]
34 (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui
35 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5,
36 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

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