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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]an amendment to a shoreline setback line established by the erosion hazard line
- §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]Allowable structures and activities within the shoreline [setback] area.
- §12-203-12.5 Abandoned or eroded structures.
- §12-203-13 Request for [a determination] approval of structures and activities in the shoreline[setback] area

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 appeal
17		
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		

**SUBCHAPTER 1**

**GENERAL PROVISIONS**

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

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

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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  
39 shoreline.

40 "Average lot depth" means the measurement obtained by adding the

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

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

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

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

14 "Calamity" means any episodic non-chronic event producing sudden  
15 and severe damage or risk of imminent severe damage or threat to public  
16 health or safety within the reasonably foreseeable future.

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

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

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

29 ["Coastal erosion hazard zone" shall include all of the land area  
30 between the shoreline and a line as established by measuring twenty-  
31 feet plus a distance of fifty times the annual erosion hazard rate from  
32 the shoreline.] "Coastal hazards" means [hazards created by and  
33 limited to coastal processes which are generated from waves or tides]  
34 any tsunami, hurricane, wind, wave, storm surges, high tide, flooding,  
35 erosion, sea level rise, subsidence, or point and nonpoint source  
36 pollution, as defined by 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[, etc.]].

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  
38 natural material that comprises the surface and subsurface of a parcel of  
39 land to the extent that such activity could potentially impact cultural or

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1 natural resources as determined by the director.

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

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

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

8 "Makai" means seaward.

9 "Mauka" means inland.

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

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

18 "Minor structure" means the following:

19 (1) a [man-made] structure that costs less than [\$125,000,]  
20 \$250,000, does not impede the natural movement of the shoreline, and  
21 does not significantly alter the existing grade of the shoreline [setback]  
22 area, [and may include but not be limited to:]including the following:

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

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

28 (C) landscaping and drywells in conjunction with irrigation  
29 systems;

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

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

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

36 (2) portable or movable walkways for public access, such as  
37 wooden or composite boardwalks or dune walkovers. or structures  
38 providing access that primarily benefit the public, as determined by the  
39 director,

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

4 "Nonconforming structure/activity, lawful" means a structure or  
5 activity which was lawfully existing or established ~~within the shoreline~~  
6 ~~area and which:~~ outside the shoreline area when it was originally  
7 constructed or initiated and is now inside the shoreline area, and either

8 (1) ~~Was~~was completely built or initiated prior to June 22, 1970;  
9 or received all applicable and required permits and approvals, for all  
10 structures and activities, prior to the effective date of these rules.

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

13 (3) ~~Was outside the shoreline area when it received either a~~  
14 ~~building permit or board approval.~~

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

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

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

- 29 (1) Property boundaries;
- 30 (2) Natural features such as large trees, rock outcroppings;
- 31 (3) Topography in and around the proposed construction; and
- 32 (4) Any other information which identifies the existing condition  
33 of the subject parcel of land.

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

38 "Qualified demolition" means the demolition of a structure or  
39 structures where such demolition:



- 1 (1) Will not adversely affect beach processes;
- 2 (2) Will not artificially fix the shoreline;
- 3 (3) Will not interfere with public access, except for public safety
- 4 reasons during demolition operations;
- 5 (4) Will not interfere with public views to and along the shoreline,
- 6 except during demolition operations;
- 7 (5) Will be consistent with:
- 8 (A) [Section 12-203-2(5) that states that the quality of
- 9 scenic and open space resources should be protected, preserved and,
- 10 where desirable, restored;] The purpose of these rules; and
- 11 (B) Section 205A-2(c)(3)(C), HRS, which states that an
- 12 objective and policy of the coastal zone management program is to
- 13 preserve, maintain, and, where desirable, improve and restore shoreline
- 14 open space and scenic resources; and
- 15 (6) Will comply with:
- 16 (A) Chapter 19.62, Maui County Code, relating to flood
- 17 hazard areas;
- 18 (B) Chapter 20.08, Maui County Code, relating to soil
- 19 erosion and sedimentation control; and
- 20 (C) Chapter 6E, HRS, relating to historic preservation.
- 21 "Reconstruction" means rebuilding more than 75 percent of an
- 22 entire structure as measured by either the floor area or current valuation.
- 23 "Renovation" means the remodel, update, or upgrade of a structure
- 24 that does not increase existing height or floor area and is not
- 25 reconstruction.
- 26 "Repair" means the fixing or replacing of any part of an existing
- 27 structure for the purpose of its maintenance, or renewal of surface
- 28 treatments such as painting, carpeting, or exterior siding with
- 29 substantially similar use of materials and location, but does not include
- 30 expansion of use or intensity, reconstruction or renovation.
- 31 "Restaurant dining area" means an outdoor seating area that
- 32 includes movable tables and chairs, and may include movable umbrellas,
- 33 for customers of a restaurant where food or beverages are served and
- 34 consumed; this does not include a bar, kitchen or other facility where food
- 35 or beverages are prepared.
- 36 "Sand" means particles of mineralogic or rock material ranging in
- 37 diameter from 0.0625 millimeters to 2 millimeters that shall be
- 38 substantially clean of rubble and debris; shall contain no more than fifteen

1 percent volume of silt which ranges in diameter from 0.039 millimeters to  
2 0.0625 millimeters and clay which ranges in diameter from 0.00006  
3 millimeters to .0039 millimeters; and shall not consist of artificially  
4 crushed coral as defined by chapter 20.08, Maui County Code. Additional  
5 provisions on quality, such as for dune or beach restoration purposes, may  
6 be required.

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

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

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

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

37 "Shoreline processes" means the natural flow of the ocean which  
38 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)

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**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:

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

~~(2ii)~~ 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

~~(3iii)~~ 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 shoreline.

(B) For areas where the erosion hazard line is mapped and where

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

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1 distance from the shoreline that provides for the] a lot's minimum  
2 buildable depth; provided that, in no case shall [the shoreline setback line]  
3 such structures and activities be located less than [twenty-five] forty feet  
4 from the shoreline. Any approval granted under this section shall include  
5 conditions that the owner of the property shall not implement measures  
6 that result in shoreline hardening and that conditions of approval shall be  
7 recorded with the Bureau of Conveyances (OP/staff).

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

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

16  
17 **§12-203-7 Request for [a shoreline setback determination or an**  
18 **annual erosion hazard rate amendment.] an amendment to a**  
19 **shoreline setback line established by the erosion hazard line or the**  
20 **approximate shoreline mapped by the department.** (a) A request for[a

21 shoreline setback determination or an annual erosion hazard rate  
22 amendment] an amendment to a shoreline setback line established by the  
23 erosion hazard line or the approximate shoreline mapped by the  
24 department shall be submitted to the department on a form prescribed by  
25 the director and shall be accompanied by applicable information to assist  
26 in the [determination,] consideration of the request, which could include  
27 [but not be limited to] a certified shoreline survey; [construction]  
28 development plans, if any; existing and finish contours; photographs of  
29 the shoreline [setback] area; written [reasons] justification addressing  
30 compliance with the criteria set forth in these rules; and analysis of coastal  
31 erosion and shoreline processes. The director shall approve, approve with  
32 conditions, or deny a request for a shoreline setback [determination] line  
33 amendment in accordance with [the criteria set forth in] these rules. The  
34 director shall transmit any request for [an annual erosion hazard rate] a  
35 shoreline setback line amendment with all relevant information to  
36 appropriate agencies for review and comment. Upon consultation with  
37 various agencies, the director shall approve or approve with conditions, a  
38 request for [an annual erosion hazard rate] a shoreline setback line  
39 amendment if the director finds that based on clear and convincing

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1 evidence the best parcel-specific [estimate of historical shoreline change  
2 differs from the established rate.] setback differs from the setback  
3 established by the erosion hazard line. The director shall take action on  
4 any application for [an annual erosion hazard rate] a shoreline setback  
5 line amendment within thirty days from the date final agency comments  
6 are received and the application is deemed complete by the director.

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

16  
17 **§12-203-8 Determination of the shoreline.**[(a)] The director may  
18 require an applicant to provide a certified shoreline survey for any activity  
19 in the shoreline area. The shoreline shall be established and certified in  
20 accordance with the procedures prescribed by the board of land and  
21 natural resources; provided that, no determination of a shoreline shall be  
22 valid for a period longer than the duration established by the board of land  
23 and natural resources, except for those portions of the shoreline which are  
24 fixed by naturally stable geologic features that are not eroding as  
25 determined by the director [man-made structures, which have been  
26 approved by appropriate government agencies, and for which engineering  
27 drawings exist to locate the interface between the shoreline and the  
28 structure]. ~~The director may require an applicant for any activity in the~~  
29 ~~shoreline area to provide a certified shoreline survey.~~ [Eff 11/27/03]  
30 (Auth: HRS §205A-42; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS  
31 §§205A-42, 205A-43, 205A-43.6, 205A-45)

32  
33 **§12-203-9 SiteDevelopment plans.** Unless otherwise required by  
34 the director, all development and site plans showing the location of the  
35 shoreline and shoreline setback line of a lot shall:

- 36 (1) Be drawn to the scale of 1"=20'0";  
37 (2) Show the shoreline, existing site conditions including human-  
38 caused and natural features such as large trees, rock outcroppings, or  
39 other known sensitive environmental areas such as special flood hazard

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1 area, coastal dune, tsunami zone, erosion hazard line within the parcel,  
2 3.2-foot sea level rise exposure area, wetland, streams, estuary or  
3 geologically hazardous land, and existing conditions along properties  
4 immediately adjacent to the subject lot; and

5 (3) Show contours at a minimum interval of two feet.; and

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

9  
10 **§12-203-10 Structures and activities subject to these rules;**  
11 **exceptions.** All structures and activities located or proposed to be located  
12 within the shoreline area including subdivisions shall be subject to these  
13 rules and conform to the requirements of this chapter. Other than the  
14 following exceptions, [The] the requirements of this chapter shall not  
15 abrogate the requirements of any other applicable statutes, codes,  
16 ordinances, rules and regulations, or other law. Construction immediately  
17 inland of the shoreline area shall also be subject to these rules until a  
18 certified and confirmed survey map, prepared in accordance with the  
19 provisions of section 12-203-8 herein, is filed with the department.

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

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

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

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



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1           (d) Archaeological, geophysical, percolation, engineering, soils,  
2 and other scientific testing conducted by a licensed archaeological or  
3 scientific professional involving temporary excavation limited to the  
4 minimum extent determined necessary and appropriate or as approved by  
5 the State Historic Preservation Division, and employing best management  
6 practices protective of the environment and natural and cultural  
7 resources;

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

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

15           (i) the removal and disposal of disaster debris that does not  
16 expand the area of disturbance; emergency structure  
17 stabilization and control erosion and runoff;

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

21           (iii) emergency installation of protective measures to protect  
22 habitable structures provided such measures are temporary  
23 and limited in scale.

24           (g) Nonstructural interior maintenance, repairs, and renovations  
25 to existing, lawfully established structures that involve no expansion, no  
26 ground disturbance, and do not increase the density or intensity of use,  
27 such as paint, floors, carpets, cabinets, and interior walls and doors,  
28 limited to a cumulative valuation of less than \$500,000 in any 24-month  
29 period for a single ownership on a single lot or set of lots composing a  
30 unified building site, provided a declaration is filed with the department.  
31 Increases in the density or intensity of use can be demonstrated by  
32 increased off-street parking requirements pursuant to Title 19, Maui  
33 County Code, increased storage needs, or other effects as determined by  
34 the director;

35           (h) Nonstructural exterior maintenance, repairs, and renovations  
36 to existing, lawfully established structures that involve no ground  
37 disturbance, such as doors, windows, shutters, siding, roof repairs or  
38 replacement and, for structures erected in 1981 or after, to protect against  
39 impacts from lead-based paint, painting with related preparatory work,  
40 limited to a cumulative valuation of less than \$500,000 in any 24-month

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1 period for a single ownership on a single lot or set of lots composing a  
2 unified building site, provided a declaration is filed with the department;

3 (i) Operation and maintenance activities for existing public  
4 roadways and drainage systems, subject to approval by the applicable  
5 state or county agency, such as vegetation management activities,  
6 including tree trimming and cutting and vegetation removal, and clearing  
7 obstructions including beach sand accumulations that block publicly-  
8 owned drainage ways, provided that beach sand is placed on adjacent  
9 beaches or dunes, and the obstruction consists solely of beach sand that  
10 is removed to the minimum volume and depth necessary to allow for  
11 passage of flood waters, and including roadway pavement patching, repair,  
12 restriping and grooving but not including resealing, resurfacing or  
13 reconstruction, and provided a declaration is filed with the department.

14 (j) With the application of best management practices to protect  
15 the marine and land environment, emergency protection of water,  
16 wastewater or stormwater infrastructure managed by the Department of  
17 Water Supply, Department of Environmental Management, or the  
18 Department of Public Works when such infrastructure at imminent risk of  
19 failure which would substantially affect public health or safety, including  
20 significant water loss, or contamination of surface water, land, or water  
21 supply, provided a declaration is filed with the department.

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

25  
26 **§12-203-11 Prohibited activities within the shoreline area.** The  
27 mining or taking of sand, dead coral or coral rubble, rocks, soil, or other  
28 beach or marine deposits from the shoreline area is prohibited with the  
29 following exceptions:

30 [(1) The taking from the shoreline area of the materials, not in  
31 excess of one gallon per person per day, for reasonable, personal  
32 noncommercial use; or]

33 [(2)](1) Where the mining or taking is authorized by a variance  
34 pursuant to these rules; or

35 [(3)](2) The clearing of these materials from existing drainage  
36 pipes and canals and from the mouths of streams including clearing for  
37 the purposes under HRS section 46-11.5; provided that, the sand is  
38 removed to the minimum volume and depth necessary to allow for passage  
39 of flood waters and shall be placed on adjacent areas unless such  
40 placement would result in significant turbidity or would otherwise be

1 detrimental to the shoreline environment; or

2 ~~[(4)]~~(3) The cleaning of the shoreline area for state or county  
3 maintenance purposes, including the clearing of seaweed, limu, and debris  
4 under HRS section 46-12; provided that, the sand removed shall be placed  
5 on adjacent areas unless the placement would result in significant  
6 turbidity or would otherwise be detrimental to the shoreline environment.  
7 [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County  
8 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§46-11.5, 46-12, 205A-43.6, 205A-  
9 44, 205A-45)

10  
11 **§12-203-12 [Permitted] Allowable structures and activities**  
12 **within the shoreline [setback] area.**

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

- 16 (1) Existing lawful nonconforming [structures/activities.]  
17 structures or activities.
- 18 (2) A structure or activity that received a shoreline variance or  
19 administrative approval from the director prior to the adoption  
20 of these rules provided [.] Said] the variance [/] or approval [be]  
21 remains valid.
- 22 (3) A structure or activity that is necessary for, or ancillary to,  
23 continuation of agriculture or aquaculture existing in the  
24 shoreline [setback] area on June 16, 1989.
- 25 (4) A structure or activity that consists of maintenance, repair,  
26 [reconstruction,] and minor additions or alterations of legal  
27 boating, maritime, or water sports recreational facilities,  
28 [which are publically owned,] and Hawaiian fishponds, and  
29 [which result] that results in no interference with natural  
30 beach processes; provided that the permitted structure may  
31 be repaired, but shall not be enlarged within the shoreline  
32 [setback] area without a variance.
- 33 (5) [A structure, excluding those defined as lawful  
34 nonconforming, that received a written governmental approval  
35 and is the subject of repairs] Repairs to a lawful conforming  
36 structure, or repairs to a lawful nonconforming structure that  
37 is situated entirely mauka of the sea level rise exposure area  
38 on nonerodable land as determined by the director, provided  
39 that:
- 40 (A) The repairs are valued by a licensed professional

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1 engineer or architect at less than 50[fifty] percent of the  
2 current replacement cost of the structure;  
3 (B) The repairs do not enlarge or expand the structure, nor  
4 intensify the structure's use; and  
5 (C) The repairs are permitted by the building code, flood  
6 hazard regulations, and special management area law.

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7 (6) Repairs or nonstructural improvements to a lawful  
nonconforming structure that became lawful nonconforming  
upon DATE OF ADOPTION, provided that:

(A) The repairs or nonstructural improvements are valued  
by a licensed professional engineer or architect at less  
than 10 or 20 percent of the current replacement cost  
of the structure over a ten-year period;

(B) The repairs or nonstructural improvements do not  
enlarge or expand the structure in a manner that  
increases the nonconformity, nor intensify the  
structure's use; and

(C) The repairs or nonstructural improvements are  
permitted by the building code, flood hazard  
regulations, and special management area  
requirements.

21

OPTION A: Most  
restrictive -  
no structures  
can rebuild if  
damaged by  
chronic 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, episodic and non-chronic natural  
disaster, accidental means, or other calamity, provided that:

(A) The structure was not damaged by ~~coastal hazards~~  
marine flooding, erosion, sea level rise, or undercutting  
or sink holes generated by sea level rise or wave action,  
king tides and storm surges.

OR

(A) The structure was not damaged by ~~coastal hazards~~  
marine flooding, erosion, sea level rise, or undercutting  
or sink holes generated by sea level rise or wave action,  
king tides and storm surges beyond 50 percent of its  
replacement value

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

~~[(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~~

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

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- ~~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 the Bureau of Conveyances;
  - (G) This subsection shall not apply to critical public infrastructure such as waterlines, wastewater lines, drainage systems, and roadways where it is demonstrated that repairs are necessary to system functionality and relocation or retreat is not viable (DPW).
- (8) Lawfully constructed shoreline hardening structures that are deemed by the director to be critical to protecting a habitable structure or public infrastructure may be repaired or maintained with like-for-like materials (OCCL) up to 50 percent of its replacement value; otherwise, the structure shall not be repaired and shall be demolished and removed. The applicant shall provide a professionally certified

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- 1                    construction estimate to demonstrate the replacement value  
2                    of the structure, along with its size and dimensions, and  
3                    documentation or evidence of the structure being lawfully  
4                    nonconforming. The repairs or maintenance shall not  
5                    substantially exceed the size, height or density of the original  
6                    structure and shall implement BMPs as determined by the  
7                    director;
- 8                    [(7)(9)) Qualified demolition;
- 9                    [(8)(10)) [Beach nourishment/dune restoration] Beach-nourishment,  
10                    dune-restoration, sand-pushing, and coastal revegetation  
11                    projects approved by all applicable governmental agencies;
- 12                    [(9)(11)) A structure or activity that has been determined by the  
13                    director to be a minor structure or minor activity within the  
14                    shoreline [setback] area [which] that does not adversely affect  
15                    beach processes, does not artificially fix the shoreline, and  
16                    does not interfere with public access or public views to and  
17                    along the shoreline and which meets the purpose of this  
18                    chapter[, HRS chapter 205A, as amended, and chapter 19.62,  
19                    Maui County Code, relating to coastal high hazard districts.],  
20                    the building code, flood hazard regulations, and special  
21                    management area requirements;
- 22                    (12) Adaptation of existing lawful or lawful nonconforming  
23                    structures in response to their location within SLRXA,  
24                    including relocation of a structure mauka of the SLRXA,  
25                    reducing the size of a structure, elevating a structure within  
26                    the existing footprint;
- 27                    [(10)(13)) [Emergency protection of an imminently threatened legally  
28                    habitable structure, or infrastructure at imminent risk of  
29                    failure which would substantially affect public health or  
30                    safety, provided that:
- 31                    (A) The protection is temporary and is removed within one  
32                    hundred eighty calendar (180) days of installation;
- 33                    (B) The protection receives approval in accordance with  
34                    section 12-202-16, special management are rules of the  
35                    Maui planning commission; and
- 36                    (C) Given the significance of the emergency, the protection  
37                    is the best management alternative in relation to beach,  
38                    shoreline, and coastal resource conservation.]
- 39                    Activities that have received a special management area  
40                    emergency permit pursuant to section 12-202-16 of the

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- 1           special management area rules for the Maui planning  
2           commission;
- 3       (14) Nonstructural single-story enclosures of existing, lawfully  
4           established roofed residential lanais, decks, patios, balconies,  
5           carports, or similar structures that are accessory to single-  
6           family dwellings and multi-family dwellings and that are  
7           included in the definition of "floor area" in Title 19 of the Maui  
8           County Code;
- 9       (15) On private property, one temporary event and its signage,  
10           such as a fundraiser, community event, festival, fair, luau,  
11           canoe regatta, surf meet, and family celebration, occurring not  
12           more than once in a thirty-day period, limited to ninety-six  
13           hours including setup and takedown, involving no new  
14           ground altering activity, and having no significant impact on  
15           public access to beach and ocean recreational areas; on public  
16           property, such temporary events and signage under a county  
17           or state permitting authority;
- 18       (16) Repair, construction, or reconstruction of critical public  
19           infrastructure beyond the activities allowed pursuant to  
20           section 12-203-10;
- 21       (17) Utility poles, tsunami sirens built to approved standard  
22           specifications, and accessory utility structures along existing  
23           utility corridors;
- 24       (18) Uses and structures established pursuant to section 12-203-  
25           6(b);
- 26       (19) Additions and alterations of structures, or intensification of  
27           use, when the director has determined that they involve only  
28           existing lawful structures and uses to which they are  
29           subordinate and which are protected for their useful life by  
30           being located mauka of public facilities that are protected by  
31           shoreline hardening or natural features not subject to erosion,  
32           or the director determines that alterations will elevate the  
33           entire structure to be adequately protected for its useful life;
- 34       (20) For areas protected by beach nourishment, new non-  
35           habitable structures and uses within forty feet immediately  
36           makai of a lot's minimum buildable depth, that are accessory  
37           to lawful structures and uses and that will be protected for  
38           their useful life by being located mauka of shorelines  
39           protected by beach nourishment. Any approval granted under  
40           this section shall include conditions that the owner of the

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- 1 property shall not implement measures that result in  
2 shoreline hardening and that conditions of approval shall be  
3 recorded with the Bureau of Conveyances;
- 4 (21) Structures, such as wooden dune walkovers, that will  
5 enhance either vertical or lateral public shoreline access  
6 provided that they do not adversely affect beach processes,  
7 artificially fix the shoreline, or interfere with public access or  
8 public views to and along the shoreline;
- 9 (22) Exterior installation on and maintenance, repairs, and  
10 renovations to existing, lawfully established structures that  
11 involve no ground disturbance and that are nonstructural,  
12 such as signage, wireless antennae and other transmission  
13 equipment, satellite dishes, and roof mounted equipment,  
14 such as photovoltaic and solar panels;
- 15 (23) Patching, repairs, and resurfacing of existing driveways and  
16 parking lots greater than 1,000 square feet, including low  
17 impact development features as detailed in Hawaii's Low  
18 Impact Development Guide or other guidance where  
19 appropriate;
- 20 (24) When associated with an existing lawful structure, site  
21 improvements, involving limited ground disturbance, such as  
22 installation of turf, shallow landscaping, irrigation, and  
23 manual invasive species control that does not use herbicides  
24 and does not involve grubbing or earth moving, installation of  
25 permeable pavement, and replacement of asphalt or concrete  
26 slabs and driveways;
- 27 (25) When associated with an existing lawful structure, site  
28 improvements, involving limited ground disturbance such as  
29 the installation, removal, or maintenance of trees and shrubs  
30 and landscaping management plan implementation, utility  
31 pedestals, ground signs, water, sewer, and conduit lines, walls  
32 and fences up to four feet in height, telephone and light poles,  
33 mailbox posts, and solar panels, provided that that this does  
34 not include new wireless telecommunications towers,  
35 windmills and wind turbines;
- 36 (26) Subdivisions in the shoreline area which ensure proposed  
37 development will be placed mauka of the shoreline setback  
38 line and allow for a minimum buildable area for all subdivided  
39 lots and which provide public shoreline access;



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1           (27) Restaurant dining areas that do not exceed a total of 2,000  
2           square feet within the established shoreline setback area per  
3           restaurant. Such use shall involve no ground-altering activity;  
4           shall not impede the natural movement of the shoreline,  
5           dunes, or vegetation; shall not impede public shoreline access  
6           or existing walkways; and shall be removed upon imminent  
7           threat of erosion, storm impact, or other anticipated hazard  
8           or calamity;

9           (b) All structures and activities not specifically permitted in this  
10           section are prohibited.

11           (c) If any new structures are proposed to be located within the  
12 shoreline [setback] area, the following restrictions shall apply:

13           (1) All new structures shall be elevated on pilings or columns, in  
14 accordance with the standards for development in chapter  
15 19.62, Maui County Code, relating to coastal high hazard  
16 districts, so that the lowest horizontal portion of the structural  
17 members of the lowest floor is elevated above the base flood  
18 elevation, or above existing grade, whichever is greater.

19           (2) The applicant, its successors, and permitted assigns shall  
20 defend, indemnify, and hold the County of Maui harmless  
21 from and against any and all loss, liability, claim or demand  
22 arising out of damages to said structures or activities from  
23 coastal natural hazards and coastal erosion.

24           (3) The construction of shoreline hardening structures or  
25 activities shall be prohibited throughout the life of the  
26 structure or activity.

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

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

35           [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui  
36 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44,  
37 205A-45; MCC Chapter 19.62)

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39           **§12-203-12.5 Abandoned or eroded structures.** So that the  
40 structure does not become a hazard or threat to the public health, safety

1 or welfare, or to cultural or natural resources, if a structure in the  
2 shoreline area is eroded or abandoned, the property owner must apply for  
3 a qualified demolition pursuant to §12-203-12(a)(7) within 180 days; the  
4 property owner must initiate demolition within 180 days of approval and  
5 must complete demolition within 180 days of initiation, unless additional  
6 time is approved by the director.

7  
8 **§12-203-13 Request for [a determination of] approval of**  
9 **structures and activities in the shoreline [setback] area.** (a) [All]Other  
10 than the exceptions listed in §12-203-10, all proposed structures and  
11 activities in the shoreline [setback] area shall be subject to an assessment  
12 made by the director.

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

27 (b) The director shall notify the commission, at the commission's  
28 next regularly scheduled meeting, of any application for, or issuance of,  
29 approval of structures and activities in the shoreline [setback] area, receipt  
30 of which shall be acknowledged by the commission. Such notification  
31 shall include[, but not be limited to,] the name of each applicant[, and the  
32 location,]and purpose of the development, and the shoreline setback  
33 determination. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-  
34 45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-  
35 44, 205A-45)

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### SUBCHAPTER 3

#### VARIANCES

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

- (1) An administrative fee as established in the County budget;
- (2) Certification from the owner or lessee of the lot [which authorizes] authorizing the application for variance;
- (3) An environmental assessment or environmental impact statement prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawaii, or a chapter 343 exemption determination (OP);
- (4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity, or operation is to occur;
- (5) A development plan and site plan of the shoreline [setback] area, drawn to scale; [, showing:
  - (A) Existing natural and man-made features and conditions within the shoreline setback area;
  - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
  - (C) The certified shoreline and the shoreline setback line;
  - (D) Contours at a minimum interval of two feet unless waived by the director; and
  - (E) Proposed development and improvements showing new conditions;]
- (6) A copy of the certified shoreline survey of the property;
- (7) Detailed justification of the proposed project[, which] that addresses the purpose and intent of these rules and the

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

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

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11 **§12-203-15 Criteria for approval of a variance.**

12 (a) A variance may be granted for a structure or activity  
13 otherwise prohibited by this chapter, if the commission finds in  
14 writing, based on the record presented, that the proposed structure  
15 or activity is necessary for or ancillary to:

- 16 (1) Cultivation of crops;  
17 (2) Aquaculture;  
18 (3) Landscaping; provided that, the commission finds that  
19 the proposed structure or activity will not adversely  
20 affect beach processes and will not artificially fix the  
21 shoreline;  
22 (4) Drainage;  
23 (5) Boating, maritime, or water sports recreational  
24 facilities;  
25 (6) Facilities or improvements by public agencies or public  
26 utilities regulated under HRS chapter 269;  
27 (7) Private facilities or improvements that are clearly in the  
28 public interest;  
29 (8) Private facilities or improvements [which] that will [neither]  
30 not adversely affect beach processes, result in flanking  
31 shoreline erosion (OP), nor artificially fix the shoreline;  
32 provided that, the commission also finds that hardship will  
33 result to the applicant if the facilities or improvements are not  
34 allowed within the shoreline area;  
35 (9) Private facilities or improvements that may artificially fix the  
36 shoreline; provided that, the commission finds that shoreline  
37 erosion is likely to cause hardship to the applicant if the  
38 facilities or improvements are not allowed within the shoreline  
39 area; and provided further that, the commission imposes  
40 conditions to prohibit any structure seaward of the existing

- 1 shoreline unless it is clearly in the public interest, and  
2 provided that that the improvements or facilities shall not be  
3 in areas with sand beaches or where artificially fixing the  
4 shoreline may interfere with existing recreational or waterline  
5 activities unless it is clearly in the public interest (OP); or  
6 (10) Moving of sand from one location seaward of the shoreline to  
7 another location seaward of the shoreline; provided that, the  
8 commission also finds that the moving of sand will not  
9 adversely affect beach processes, will not diminish the size of  
10 the public beach, and will be necessary to stabilize an eroding  
11 shoreline.  
12 (b) A structure or activity may be granted a variance upon  
13 grounds of hardship if:  
14 (1) The applicant would be deprived of reasonable use of the land  
15 if required to fully comply with the shoreline [setback] rules;  
16 (2) The applicant's proposal is due to unique circumstances and  
17 does not draw into question the reasonableness of the  
18 shoreline [setback] rules; and  
19 (3) The proposal is the practicable alternative [which] that best  
20 conforms to the purpose of [the shoreline setback] these rules.  
21 (c) Before granting a hardship variance, the commission must  
22 determine that the applicant's proposal is a reasonable use of the land.  
23 Because of the dynamic nature of the shoreline environment,  
24 inappropriate development may easily pose a risk to individuals or to the  
25 public health and safety. For this reason, the determination of the  
26 reasonableness of the use of land should properly consider factors such  
27 as shoreline conditions, erosion, surf and flood conditions, and the  
28 geography of the lot.  
29 (d) For purposes of this section, hardship shall not include:  
30 economic hardship to the applicant; [county] County zoning changes,  
31 planned development permits, cluster permits, or subdivision approvals  
32 after June 16, 1989; any other permit or approval [which] that may have  
33 been issued by the commission. If the hardship is a result of actions by  
34 the applicant, such result shall not be considered a hardship for purposes  
35 of this section.  
36 (e) No variance shall be granted unless appropriate conditions  
37 are imposed:  
38 (1) To maintain and require safe lateral access to and along the  
39 shoreline for public use or adequately compensate for its loss;

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- 1 (2) To minimize risk of adverse impacts on beach processes;  
2 (3) To minimize risk of structures failing and becoming loose  
3 rocks or rubble on public property; [and]  
4 (4) To minimize adverse impacts on public views to, from, and  
5 along the shoreline. For purposes of this section only,  
6 "adversely impacts public views" means the adverse impact on  
7 public views and open space resources caused by new  
8 building structures exceeding a one-story or thirty-foot height  
9 limitation;[and]  
10 (5) To comply with chapters 19.62 and 20.08, Maui County Code,  
11 relating to flood hazard districts and erosion and  
12 sedimentation control respectively;  
13 (6) To not implement measures that result in shoreline  
14 hardening; and  
15 (7) To require that the owner of a lot for which the variance is  
16 granted to record these conditions with the Bureau of  
17 Conveyances.  
18 (f) Notwithstanding any provision of this section to the contrary,  
19 the commission may consider granting a variance for the protection of a  
20 legal structure or public infrastructure; provided that, the structure is at  
21 risk of damage from coastal erosion, poses a danger to the health, safety  
22 and welfare of the public, and is the best shoreline management option in  
23 accordance with relevant state policy on shoreline hardening.  
24 (g) The applicant may apply to the department for an amendment  
25 to the variance in a manner consistent with the procedures of section 12-  
26 202-17 of the special management area rules of the Maui planning  
27 commission. [Eff 11/27/03] (Auth: HRS §205A-43.5, 205A-46; Maui  
28 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.5, 205A-46; MCC  
29 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 publishing the notice once per week for three consecutive weeks in a newspaper that is printed and issued at least twice



1 weekly in the County and is generally circulated through the  
2 County. The date of service shall be the date on which the  
3 certified or registered mail is accepted, the date of regular mail  
4 delivery confirmation, the date of personal service, the date of  
5 posting on the property, or the date of the last publication in  
6 the newspaper. If the director uses more than one method of  
7 service, then the date of service shall be the later of the dates  
8 of service.

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

25 (A) Previous violations by the same person;

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

28 (C) The degree of cooperation provided by the violator  
29 during the investigation;

30 (D) Amount necessary to deter future violations;

31 (E) Evidence of circumstances beyond the control of the  
32 violator;

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

35 (G) The amount of time and resources required by the  
36 department to investigate and determine that a violation  
37 occurred.

38 (3) The department, in consultation with the department of the  
39 corporation counsel, may institute a civil action in any court

- 1                   of competent jurisdiction for the enforcement of any  
2                   settlement agreement or order issued pursuant to this  
3                   section.  
4           (4) Nothing in this section shall prohibit the department, through  
5                   the corporation counsel, from filing an order or motion directly  
6                   with a court in the event that public health, safety and welfare  
7                   may be at risk.  
8           (5) Nothing in this section shall prohibit the department from  
9                   issuing a warning to the violator before issuing a notice of  
10                   violation and order. [Eff 1/1/94; am 9/28/97] (Auth: HRS  
11                   §205A-43, 205A-43.6) (Imp: HRS §43.6)  
12

13           **§12-203-17 Penalties.** Any person who violates any provision of  
14 these rules shall be subject to the penalties provided for in HRS §205A-32.  
15 [Eff 11/27/03] (Auth: HRS §§205A-32, 205A-43.6; Maui County Charter  
16 §§8-8.4, 13-2(15)) (Imp: HRS §205A-32)  
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**SUBCHAPTER 5**

**APPEALS**

**§12-203-18 Appeal of director's decision; filing the notice of appeal.** Appeal of the director's decision including, but not limited to, the validity of the [annual erosion hazard rate, and] erosion hazard line, and the determination of minor [structures/activities,] structures or activities, may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director's written decision or, where the director's decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director's decision. The notice of appeal shall be filed in accordance with section 12-201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission's next regularly scheduled meeting, of the filing of the notice of appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

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

**§12-203-20 Joint or consolidated appeals.** If two or more parties are entitled to appeal from a decision of the director and their interests are such as to make joinder practicable, they may file a joint notice of appeal and thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the commission upon the commission's own motion, upon motion of a party, or upon stipulation of the parties to the several appeals. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-

1 43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp:  
2 HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County  
3 Charter §§8-8.4, 13-2(15))  
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5 **§12-203-21 Service of the notice of appeal.** If the appellant is  
6 someone other than the applicant, appellant shall serve a file-marked copy  
7 of the appeal by mail or delivery thereof to counsel of record for each other  
8 party, or, if a party is not represented by counsel, to the party at the party's  
9 last known address. Proof of service shall be filed with the department  
10 within seven days after the filing of the notice of appeal. [Eff 11/27/03]  
11 (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui  
12 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5,  
13 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))  
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15 **§12-203-22 Payment of fees.** Upon the filing of any separate or  
16 joint notice of appeal, the appellant shall pay such fees as are set forth in  
17 the County budget ordinance. [Eff 11/27/03] (Auth: HRS §§205A-43,  
18 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4,  
19 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-  
20 49, Maui County Charter §§8-8.4, 13-2(15))  
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22 **§12-203-23 Contested case hearing on appeal.** The commission  
23 shall hold a contested case hearing on the appeal. The director, the  
24 appellant, and, where the appellant is someone other than the applicant,  
25 the applicant shall be parties to the proceedings. Subchapters 3, 4, and  
26 5 of chapter 12-201 of the rules of practice and procedure for the Maui  
27 planning commission, relating to petitions to intervene, contested case  
28 procedures, and [post hearing] post-hearing procedures, respectively,  
29 shall govern the proceedings, except that petitions to intervene on an  
30 appeal shall be filed with the commission no later than ten days after the  
31 meeting at which the commission received notification of the filing of an  
32 appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6,  
33 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS  
34 §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County  
35 Charter §§8-8.4, 13-2(15))  
36

37 **§12-203-24 Disposition of appeal.** The commission may affirm the  
38 decision of the director, or may reverse or vacate and remand the decision  
39 of the director if the substantial rights of the petitioner may have been

- 1 prejudiced because the decision is:  
2 (1) Based on clearly erroneous findings of material fact or  
3 erroneous application of the law; or  
4 (2) Arbitrary or capricious in its application; or  
5 (3) A clearly unwarranted abuse of discretion. [Eff 11/27/03]  
6 (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui  
7 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5,  
8 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

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