

TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 02

MAUI PLANNING COMMISSION

CHAPTER 203

SHORELINE RULES FOR THE MAUI PLANNING COMMISSION

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RECEIVED AT PC MEETING ON 6/16/16
Committee Chair Couch

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

- (1) That use and enjoyment of the shoreline area be ensured for the public to the fullest extent possible;
- (2) That the natural shoreline environment be preserved;
- (3) That man-made features in the shoreline area be limited to features compatible with the shoreline area;
- (4) That the natural movement of the shoreline be protected from development;
- (5) That the quality of scenic and open space resources be protected, preserved, and where desirable, restored; and
- (6) That adequate public access to and along the shoreline be provided.

These steps are necessary because development and other man-made improvements have resulted in encroachment of structures near the shoreline and, in numerous instances, erosion and other disturbances affecting the natural movement of the shoreline. Moreover, these steps are also necessary because the Hawaiian Islands are subject to coastal natural hazards such as, tsunamis, high wave action, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose hazards to residences and other structures near the shoreline. These hazards may also necessitate the need to harden the shoreline to protect structures which may have an adverse impact on the environment. Further, continual

these maps shall have no annual erosion hazard rate. Where the shoreline is fixed by;

(1) Artificial structures that are nonconforming or that have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure, or

(2) Exposed natural stabilized geographic features such as cliffs and rock formations, the annual erosion hazard rate shall cease at the interface.

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

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

"Beach nourishment" means the technique of placing sand fill along the shoreline to widen the beach and provide a buffer against coastal erosion and wave attack.

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

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

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

"Coastal hazards" means hazards created by and limited to coastal processes which are generated from waves or tides.

"Commission" means the Maui planning commission.

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

"Director" means director of the department of planning.

"Dune restoration" means the technique of rebuilding an eroded or degraded dune through one or more various methods (sand fill, drift fencing, revegetation, etc.).

calculating the shoreline setback line result in two lines that intersect with each other.

"Plan" means a detailed construction plan drawn to scale that shows the design of a structure proposed to be built within the shoreline area. The plan shall consist of data which include, but which are not limited to:

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

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

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

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with:
 - (A) Section 12-203-2(5) that states that the quality of scenic and open space resources should be protected, preserved and, where desirable, restored; and
 - (B) Section 205A-2(c)(3)(C), HRS, which states that an objective and policy of the coastal zone management program is to preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
- (6) Will comply with:
 - (A) Chapter 19.62, Maui County Code, relating to flood hazard areas;
 - (B) Chapter 20.08, Maui County Code, relating to soil erosion and sedimentation control; and

(Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-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:

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

(ii) Based on the lot's 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; and

(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.

(iii) 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.

(b) Notwithstanding any provision of this section to the contrary, a lot shall have a shoreline setback line at a distance from the shoreline that provides for

receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the name of each applicant, the location and purpose of the development, if any, and the shoreline setback determination. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

§12-203-8 Determination of the shoreline. (a) The shoreline shall be established and certified in accordance with the procedures prescribed by the board of land and natural resources; provided that, no determination of a shoreline shall be valid for a period longer than twelve months except for those portions of the shoreline which are fixed by man-made structures, which have been approved by appropriate government agencies, and for which engineering drawings exist to locate the interface between the shoreline and the structure. [Eff 11/27/03] (Auth: HRS §205A-42; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-42, 205A-43, 205A-43.6, 205A-45)

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

- (1) Be drawn to the scale of 1"=20'0";
- (2) Show the shoreline and existing conditions along properties immediately adjacent to the subject lot;
- (3) Show contours at a minimum interval of two feet; and
- (4) Show all natural and man-made features in the subject area. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-45)

§12-203-10 Structures and activities subject to these rules. All structures and activities located or proposed to be located within the shoreline area shall conform to the requirements of this chapter. The requirements of this chapter shall not abrogate the

- _____ (1) Existing nonconforming structures/activities.
- _____ (2) A structure or activity that received a shoreline variance or administrative approval from the director prior to the adoption of these rules. Said variance/approval shall be valid.
- _____ (3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
- _____ (4) A structure or activity that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publically owned, and which result in no interference with natural beach processes; provided that the permitted structure may be repaired, but shall not be enlarged within the shoreline setback area without a variance.
- _____ (5) A structure, excluding those defined as nonconforming, that received a written government approval and is the subject of repairs, provided that:
 - (A) The repairs are valued by a licensed professional engineer or architect at less than fifty percent of the 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 law.
- _____ (6) Repairs to a nonconforming structure that was damaged by fire, insects, natural disaster, accidental means, or other calamity, provided that:
 - (A) The structure was not damaged by coastal hazards;
 - (B) The repairs shall not enlarge or expand the structure, nor intensify the structure's use;
 - (C) The repairs shall also be permitted by the building code, flood hazard

hazard districts, so that the lowest horizontal portion of the structural members of the lowest floor is elevated above the base flood elevation, or above existing grade, whichever is greater.

- (2) The applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Maui harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from coastal natural hazards and coastal erosion.
- (3) The construction of all erosion-control or shoreline hardening structures or activities, with the exception of beach or dune nourishment activities, and landscape planting and irrigation, shall be prohibited throughout the life of the structure or activity.

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

(D) Minor structures or activities shall be completed or operating within one year from the later of the date of the department's determination or the date of approval of the last discretionary permit. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44, 205A-45; MCC Chapter 19.62)

§12-203-13 Request for a determination of structures and activities in the shoreline setback area.

(a) All proposed structures and activities in the shoreline setback area shall be subject to an assessment and determination made by the director.

A request for a determination of structures and activities in the shoreline setback area shall be submitted to the department on a form prescribed by the director and shall be accompanied by applicable information to assist in the determination, which may include, but not be limited to; a certified shoreline

SUBCHAPTER 3

VARIANCES

§12-203-14 Variance application. (a) A written application for variance shall be made in a form prescribed by the director and shall be filed with the director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data 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 the application for variance;
- (3) An environmental assessment prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawaii;
- (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 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 map of the property;
- (7) Detailed justification of the proposed project;

public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Maui, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the commission; or

- (4) Maintenance, repair, reconstruction, and minor additions or alternations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes. [Eff 11/27/03] (Auth: HRS §§205A-43.5, 205A-46, 343-5; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.5, 205A-46, 343-5)

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

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

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;
- (5) Boating, maritime, or water sports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under HRS chapter 269;
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or

permits, or subdivision approvals after June 16, 1989; any other permit or approval which may have been issued by the commission. If the hardship is a result of actions by the applicant, such result shall not be considered a hardship for purposes of this section.

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

- (1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;
- (2) To minimize risk of adverse impacts on beach processes;
- (3) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
- (4) To minimize adverse impacts on public views to, from, and along the shoreline. For purposes of this section only, "adversely impacts public views" means the adverse impact on public views and open space resources caused by new building structures exceeding a one-story or thirty-foot height limitation; and
- (5) To comply with chapters 19.62 and 20.08, Maui County Code, relating to flood hazard districts and erosion and sedimentation control respectively.

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

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

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 the determination of minor structures/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 taking 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

no later than ten days after the meeting at which the commission received notification of the filing of an 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))

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

- (1) Based on clearly erroneous findings of material fact or erroneous application of the law; or
- (2) Arbitrary or capricious in its application; or
- (3) A clearly unwarranted abuse of discretion. [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))

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Passed by the MPC on September 25, 2007
Signed by the Mayor November 20, 2007
Registered with the County Clerk November 21, 2007
Became Effective December 1, 2007

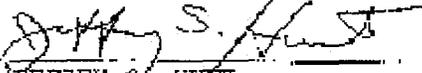
CERTIFICATION

I, JEFFREY S. HUNT, Planning Director, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Amendments to Chapter 203, Shoreline Rules for the Maui Planning Commission, drafted in Ramsayer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the 25th day of September, 2007 by affirmative vote of the proper majority following a public hearing on September 25, 2007 and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing rules was published in The Maui News on the 24th day of August, 2007.

COUNTY OF MAUI


JEFFREY S. HUNT
Planning Director

