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

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## 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 which regulate the use and activities of land within the shoreline environment in order to protect the health, safety, and welfare of the public by providing minimum protection from known coastal natural hazards; and to ensure that the public use and enjoyment of our shoreline resources are preserved and protected for future generations in

1 accordance with the Hawaii coastal zone management law, HRS chapter  
2 205A.

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, and this  
39 approach is now widely recognized in most cases to have an adverse  
40 impact on neighboring properties and the environment. To prioritize

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1 coastal resilience, and to preserve and restore environmental and cultural  
2 resources, preferred alternatives include options for nature-based  
3 protection, and to avoid, accommodate, or retreat from coastal hazards.  
4 [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I and III; Maui County  
5 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-  
6 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. [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I  
11 and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1,  
12 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)  
13

14 **§12-203-4 Definitions.** For purposes of this chapter, unless it is  
15 plainly evident from the context that a different meaning is intended,  
16 certain words and phrases used herein shall be defined as follows:

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

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

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

35 "Annual erosion hazard rate map" means a physical representation  
36 or depiction of the annual erosion hazard rate as defined herein and as  
37 adopted by the planning director.]

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

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

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

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

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

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

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

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

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

31 "Commission" means the Maui planning commission.

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

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

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

38 "Erosion hazard line" means the mapped 80 percent cumulative  
39 probability contour of the coastal erosion hazard zone with 3.2 feet of sea  
40 level rise approved by the Hawaii Climate Change Mitigation and

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1 Adaptation Commission as part of the 2017 Hawaii Sea Level Rise  
2 Vulnerability and Adaptation Report, as accessible within the Hawaii Sea  
3 Level Rise Viewer hosted by the Pacific Islands Ocean Observing System,  
4 and as may be updated from time to time.

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

6 "Lawful nonconforming structure or activity" means a structure or  
7 activity that was lawfully existing within the shoreline area and which:

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

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

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

13 "Lot" means a designated parcel, tract, or area of land established  
14 by subdivision or as otherwise established prior to the adoption of  
15 subdivision laws.

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

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

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

26 "Minor structure" means the following:

27 (1) a [man-made] structure that costs less than [\$125,000,]  
28 \$250,000, does not impede the natural movement of the shoreline, and  
29 does not significantly alter the existing grade of the shoreline [setback]  
30 area, [and may include but not be limited to:]including the following:

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

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

36 (C) landscaping and drywells in conjunction with irrigation  
37 systems;

38 (D) irrigation systems, provided they are directed away from the

1 shoreline;

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

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

6 (2) portable or movable walkways for public access, such as  
7 wooden or composite boardwalks or dune walkovers. or structures  
8 providing access that primarily benefit the public, as determined by the  
9 director.

10 A minor structure shall not include a pool, spa, gazebo, [car  
11 port,]carport, garage, or [similarly-massed structures] a similarly massed  
12 structure of a permanent nature.

13 "Nonconforming structure/activity, lawful" means a structure or  
14 activity which was lawfully existing within the shoreline area and which:

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

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

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

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

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

26 (1) Property boundaries;

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

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

29 (4) Any other information [which] that identifies the existing  
30 condition of the subject parcel of land.

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

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

37 (1) Will not adversely affect beach processes;

38 (2) Will not artificially fix the shoreline;

39 (3) Will not interfere with public access, except for public safety

1 reasons during demolition operations;

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

4 (5) Will be consistent with:

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

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

12 (6) Will comply with:

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

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

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

18 "Renovation" means the remodel, change, update or upgrade of a  
19 structure that does not result in a significant change to its configuration  
20 or floor plan, does not increase existing floor area, and does not add floors,  
21 including replacement of cabinets, fixtures, roofs, wall surfaces, and floor  
22 surfaces.

23 "Reconstruction" means the rebuilding of an entire structure.

24 "Repair" means the fixing, replacing or renewal of any part of an  
25 existing structure, but not the entire structure, solely for the purpose of  
26 its maintenance.

27 "Shoreline", as defined in HRS [205A,] section 205A-1 as amended,  
28 means the upper reaches of the wash of the waves, other than storm and  
29 seismic waves, at high tide during the season of the year in which the  
30 highest wash of the waves occurs, usually evidenced by the edge of natural  
31 rather than artificially induced vegetation growth, or the upper limit of  
32 debris left by the wash of the waves [which] that has been certified by the  
33 board of land and natural resources for a duration determined by the  
34 board.

35 "Shoreline area" as defined in HRS section 205A-41, as amended,  
36 means all of the land area between the shoreline and the shoreline setback  
37 line, and may include the area between mean sea level and the shoreline,  
38 provided that if the highest annual wash of the waves is fixed or



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1 significantly affected by a structure that has not received all permits and  
2 approvals required by law or if any part of any structure in violation of this  
3 part extends seaward of the shoreline, then "shoreline area" shall include  
4 the entire structure.

5 "Shoreline hardening" means structures that block or significantly  
6 inhibit landward movement of the shoreline and are used to protect  
7 structures or other features from erosion and other coastal hazards, to  
8 include seawalls, revetments, riprap and bulkheads. Shoreline hardening  
9 does not include beach stabilizing structures, such as groins and  
10 breakwaters, designed by a professional engineer to stabilize a sandy  
11 beach along an eroding shoreline.

12 "Shoreline processes" means the natural flow of the ocean which  
13 affect the movement of the shoreline area or lands bordering the ocean,  
14 including submerged lands.

15 ["Shoreline setback area" or "shoreline area" means "shoreline area"  
16 as defined in HRS chapter 205A, as amended, which includes all of the  
17 land area between the shoreline and the shoreline setback line, provided  
18 that if the highest annual wash of the waves is fixed or significantly  
19 affected by a structure that has not received all permits and approvals  
20 required by law or if any part of any structure in violation of this part  
21 extends seaward of the shoreline, then the term "shoreline area" or  
22 "shoreline setback area" shall include the entire structure.]

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

26 "Structure" includes, as defined in HRS section 205A-41, as  
27 amended, [but is not limited to,] any portion of any building, pavement,  
28 road, pipe, flume, utility line, fence, groin, wall, or revetment. [Eff  
29 11/27/03] (Auth: HRS §§205A-43, 205A-45, 205A-49; Maui County  
30 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-22, 205A-  
31 41)

32  
33 **§12-203-5 Severability.** If any provision or part of this chapter or  
34 the application thereof to any person or circumstance is held invalid, the  
35 invalidity shall not affect other provisions or application of this chapter  
36 which can be given effect without the invalid provision or application, and  
37 to this end the provisions of this chapter are declared to be severable. [Eff  
38 11/27/03] (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter

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1 §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5,  
2 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:] established as follows:

(1) [Twenty-five feet plus a distance of fifty times the annual erosion hazard rate from the shoreline;] For areas where the erosion hazard line is mapped, the shoreline setback line shall be the erosion hazard line plus forty feet. However, for areas where the erosion line is mapped and where known geologic information also indicates a rock formation that is erosion resistant, as determined by the director, the shoreline setback line shall be established pursuant to 12-203-6(2).

(2) [Based on the lots depth as follows:] For areas where there is no mapped erosion hazard line, the shoreline setback line shall be two hundred feet from the nearest points of the approximate shoreline as mapped by the department, except that:

(A) If the shoreline is established by a certified shoreline survey, then the shoreline setback line shall be calculated 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] (i) A lot that is not an irregularly shaped lot and that has an average lot depth of one hundred sixty feet or less shall have a shoreline setback line forty 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.] (ii) A lot that is not an irregularly shaped lot and that has an average lot depth of more than one hundred sixty feet shall have a shoreline setback line located at a distance from the shoreline

1 equal to twenty-five percent of the average lot depth, but not  
2 more than one hundred fifty feet;

3 [(3)] (iii) For irregularly shaped lots, [or where cliffs, bluffs, or other  
4 topographic features inhibit the safe measurement of  
5 boundaries and/or the shoreline,] the shoreline setback line  
6 will be [equivalent to] the greater of forty feet or twenty-five  
7 percent of the lot's depth [as determined by the director]  
8 between its front lot line and rear lot lines as measured  
9 perpendicularly from the shoreline, to a maximum of one  
10 hundred fifty feet from the shoreline.

11 (B) In areas where the safe conduct of a certified shoreline survey  
12 would be inhibited by cliffs, bluffs, or other topographic  
13 features and that the shoreline is fixed by such features, the  
14 shoreline setback shall be forty feet as measured from the top  
15 of a cliff or bluff, all as determined by the director

16 (C) In areas where the safe conduct of a certified shoreline survey  
17 would be inhibited by cliffs, bluffs, or other topographic  
18 features and that the shoreline is not fixed by such features,  
19 the shoreline setback shall be the greater of forty feet or  
20 twenty-five percent of the lot's lot depth between its front lot  
21 line and rear lot lines as measured perpendicularly from the  
22 shoreline, to a maximum of one hundred fifty feet from the  
23 approximate shoreline as mapped by the department.

24 (b) Notwithstanding any provision of this section to the contrary, any  
25 structures and activities not otherwise allowed under these rules may be  
26 built and carried out within [a lot shall have a shoreline setback line at a  
27 distance from the shoreline that provides for the] a lot's minimum  
28 buildable depth; provided that, in no case shall [the shoreline setback line]  
29 such structures and activities be located less than [twenty-five] forty feet  
30 from the shoreline. The owner of a lot for which development is approved  
31 relying upon the minimum buildable depth shall, prior to construction,  
32 record with the Bureau of Conveyances and encumber the property with a  
33 unilateral agreement to not seek protection with shoreline hardening, and  
34 to recognize that the risks of building within the minimum buildable depth  
35 may require mitigation such as elevating structures.

36 (c) Prior to commencement of grubbing, grading, or construction  
37 activities, the shoreline setback line shall be identified on the ground and

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1 posted with markers, posts, or other appropriate reference marks by a  
2 surveyor licensed in the State of Hawaii.

3 (d) Applications submitted within six months of the adoption of the  
4 amendments to this section shall be subject to this section, or the  
5 applicant may choose to be subject to the provisions in effect prior to the  
6 adoption of these amendments.

7  
8 **§12-203-7 Request for [a shoreline setback determination or an**  
9 **annual erosion hazard rate amendment.] an amendment to a**  
10 **shoreline setback line established by the erosion hazard line or the**  
11 **approximate shoreline mapped by the department.** (a) A request for[a  
12 shoreline setback determination or an annual erosion hazard rate  
13 amendment] an amendment to a shoreline setback line established by the  
14 erosion hazard line or the approximate shoreline mapped by the  
15 department shall be submitted to the department on a form prescribed by  
16 the director and shall be accompanied by applicable information to assist  
17 in the[determination,] consideration of the request, which could include  
18 [but not be limited to] a certified shoreline survey; construction plans, if  
19 any; existing and finish contours; photographs of the shoreline [setback]  
20 area; written [reasons] justification addressing compliance with the  
21 criteria set forth in these rules; and analysis of coastal erosion and  
22 shoreline processes. The director shall approve, approve with conditions,  
23 or deny a request for a shoreline setback [determination] line amendment  
24 in accordance with [the criteria set forth in] these rules. The director shall  
25 transmit any request for [an annual erosion hazard rate] a shoreline  
26 setback line amendment with all relevant information to appropriate  
27 agencies for review and comment. Upon consultation with various  
28 agencies, the director shall approve or approve with conditions, a request  
29 for [an annual erosion hazard rate] a shoreline setback line amendment if  
30 the director finds that based on clear and convincing evidence the best  
31 parcel-specific [estimate of historical shoreline change differs from the  
32 established rate.] setback differs from the setback established by the  
33 erosion hazard line. The director shall take action on any application for  
34 [an annual erosion hazard rate] a shoreline setback line amendment  
35 within thirty days from the date final agency comments are received and  
36 the application is deemed complete by the director.

37 (b) The director shall notify the commission, at the commission's  
38 next regularly scheduled meeting, of any [application for, or] issuance of[.]

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1 a shoreline setback [determination or annual erosion hazard  
2 rate]amendment, receipt of which shall be acknowledged by the  
3 commission. Such notification shall include [, but not be limited to,] the  
4 name of each applicant, the location and purpose of the development, if  
5 any, and the shoreline setback[determination.]line amendment. [Eff  
6 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County  
7 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

8  
9 **§12-203-8 Determination of the shoreline.**[(a)] The shoreline  
10 shall be established and certified in accordance with the procedures  
11 prescribed by the board of land and natural resources; provided that, no  
12 determination of a shoreline shall be valid for a period longer than the  
13 duration established by the board of land and natural resources, except  
14 for those portions of the shoreline which are fixed by [man-made]  
15 constructed structures, which have been approved by appropriate  
16 government agencies, and for which engineering drawings exist to locate  
17 the interface between the shoreline and the structure. [Eff 11/27/03]  
18 (Auth: HRS §205A-42; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS  
19 §§205A-42, 205A-43, 205A-43.6, 205A-45)

20  
21 **§12-203-9 Site plans.** Unless otherwise required by the director,  
22 all site plans showing the location of the shoreline and shoreline setback  
23 line of a lot shall:

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

31  
32 **§12-203-10 Structures and activities subject to these rules;**  
33 **exceptions.** All structures and activities located or proposed to be located  
34 within the shoreline area shall be subject to these rules and conform to  
35 the requirements of this chapter. Other than the following exceptions,  
36 [The] the requirements of this chapter shall not abrogate the requirements  
37 of any other applicable statutes, codes, ordinances, rules and regulations,  
38 or other law. Construction immediately inland of the shoreline area shall

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1 also be subject to these rules until a certified and confirmed survey map,  
2 prepared in accordance with the provisions of section 12-203-8 herein, is  
3 filed with the department.

4 The following actions are not subject to these rules and do not  
5 require a shoreline approval:

6 (a) Transfer of land title; creation or termination of easements,  
7 covenants, or other rights in structure or land;

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

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

19 (d) Archaeological, geophysical, percolation, engineering, soils,  
20 and other scientific testing conducted by a licensed archaeological or  
21 scientific professional involving temporary excavation limited to the  
22 minimum extent determined necessary and appropriate or as approved by  
23 the State Historic Preservation Division, and employing best management  
24 practices protective of the environment and natural and cultural  
25 resources;

26 (e) Nonstructural interior maintenance, repairs, and renovations  
27 to existing, lawfully established structures that involve no expansion, no  
28 ground disturbance, and do not increase the density or intensity of use,  
29 such as paint, floors, carpets, cabinets, and interior walls and doors,  
30 limited to a cumulative valuation of less than \$500,000 in any 12-month  
31 period for a single ownership on a single lot or set of lots composing a  
32 unified building site. Increases in the density or intensity of use can be  
33 demonstrated by increased off-street parking requirements pursuant to  
34 Title 19, Maui County Code, increased storage needs, or other effects as  
35 determined by the director;

36 (f) Nonstructural exterior maintenance, repairs and renovations  
37 to existing, lawfully established structures that involve no ground  
38 disturbance, such as doors, windows, shutters, siding, roof repairs or

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1 replacement and, for structures erected in 1981 or after, to protect against  
2 impacts from lead-based paint, painting with related preparatory work,  
3 limited to a cumulative valuation of less than \$500,000 in any 12-month  
4 period for a single ownership on a single lot or set of lots composing a  
5 unified building site;

6 (g) Operation and maintenance activities for existing public  
7 roadways and drainage systems, subject to approval by the applicable  
8 state or county agency, such as vegetation management activities,  
9 including tree trimming and cutting and vegetation removal, and clearing  
10 obstructions including beach sand accumulations that block publicly-  
11 owned drainage ways, provided that beach sand is placed on adjacent  
12 beaches or dunes, and the obstruction consists solely of beach sand that  
13 is removed to the minimum volume and depth necessary to allow for  
14 passage of flood waters.

15 (h) With the application of best management practices to protect  
16 the marine and land environment, emergency protection of Department of  
17 Environmental Management wastewater infrastructure or Department of  
18 Water Supply infrastructure at imminent risk of failure which would  
19 substantially affect public health or safety, including significant water  
20 loss, or contamination of surface water, land, or water supply.

21  
22 **§12-203-11 Prohibited activities within the shoreline area.** The  
23 mining or taking of sand, dead coral or coral rubble, rocks, soil, or other  
24 beach or marine deposits from the shoreline area is prohibited with the  
25 following exceptions:

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

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

35 (3) The cleaning of the shoreline area for state or county  
36 maintenance purposes, including the clearing of seaweed, limu, and debris  
37 under HRS section 46-12; provided that, the sand removed shall be placed  
38 on adjacent areas unless the placement would result in significant



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turbidity or would otherwise be detrimental to the shoreline environment.  
[Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County  
Charter §§8-8.4, 13-2(15)) (Imp: HRS §§46-11.5, 46-12, 205A-43.6, 205A-  
44, 205A-45)

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

- (1) Existing lawful nonconforming [structures/activities.] structures or activities.
- (2) A structure or activity that received a shoreline variance or administrative approval from the director prior to the adoption of these rules provided [.] Said] the variance/approval [be] remains 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 Hawaiian fishponds, and [which result] that results 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 lawful 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 50[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 lawful nonconforming structure in a manner that is proportional and directly related to [damaged] damage by

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

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

13

OPTION C:  
Most  
permissive -  
structures  
in new  
setbacks can  
rebuild if  
damaged by  
coastal  
hazards

24

25

26

27

28

29

30

These  
existing and  
new criteria  
should apply,  
regardless of  
option chosen

37

38

fire, insects, accidental means, or other calamity, provided that:

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

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

(A) The structure was outside the shoreline area when it received a building permit 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.

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

(A) The structure was outside the shoreline area when it received a building permit, or the structure was inside the shoreline area when it received a building permit and was not damaged by coastal hazards.

(B) The repairs or complete reconstruction shall not enlarge or expand the structure, nor intensify the structure's use, in a way that increases its nonconformity;

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

(D) The repairs or complete reconstruction shall be started within two years from the date of the damage;

(E) The repairs or complete reconstruction 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) The owner shall, prior to repairs beyond 50 percent of a structure's replacement value or complete reconstruction, record with the Bureau of Conveyances

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- 1                   and encumber the property with a unilateral agreement  
2                   to not seek protection with shoreline hardening;  
3           (G)   Lawfully constructed shoreline hardening structures  
4                   that are deemed by the director to be critical to  
5                   protecting a habitable structure or public infrastructure  
6                   may be repaired or maintained up to 50 percent of its  
7                   replacement value; otherwise, the structure shall not be  
8                   repaired and shall be demolished and removed. The  
9                   applicant shall provide a professionally certified  
10                  construction estimate to demonstrate the replacement  
11                  value of the structure, along with its size and  
12                  dimensions, and documentation or evidence of the  
13                  structure being lawfully nonconforming. The repairs or  
14                  maintenance shall not substantially exceed the size,  
15                  height or density of the original structure as determined  
16                  by the director.  
17           (7)   Qualified demolition.  
18           (8)   [Beach nourishment/dune restoration] Beach-nourishment,  
19                  dune-restoration or sand-pushing projects approved by all  
20                  applicable governmental agencies.  
21           (9)   A structure or activity that has been determined by the  
22                  director to be a minor structure or minor activity within the  
23                  shoreline [setback] area [which] that does not adversely affect  
24                  beach processes, does not artificially fix the shoreline, and  
25                  does not interfere with public access or public views to and  
26                  along the shoreline and which meets the purpose of this  
27                  chapter[, HRS chapter 205A, as amended, and chapter 19.62,  
28                  Maui County Code, relating to coastal high hazard districts.],  
29                  the building code, flood hazard regulations, and special  
30                  management area requirements.  
31           (10)  [Emergency protection of an imminently threatened legally  
32                  habitable structure, or infrastructure at imminent risk of  
33                  failure which would substantially affect public health or  
34                  safety, provided that:  
35                  (A)   The protection is temporary and is removed within one  
36                          hundred eighty calendar (180) days of installation;  
37                  (B)   The protection receives approval in accordance with  
38                          section 12-202-16, special management are rules of the

Maui planning commission; and

(C) Given the significance of the emergency, the protection is the best management alternative in relation to beach, shoreline, and coastal resource conservation.]

Activities that have received a special management area emergency permit pursuant to section 12-202-16 of the special management area rules for the Maui planning commission.

(11) Nonstructural single-story enclosures of existing, lawfully established roofed residential lanais, decks, patios, balconies, carports or similar structures that are accessory to single-family dwellings and multi-family dwellings and that are included in the definition of "floor area" in Title 19 of the Maui County Code.

(12) On private property, one temporary event and its signage, such as a fundraiser, community event, festival, fair, luau, and family celebration, occurring not more than once in a thirty-day period, limited to ninety-six hours including setup and takedown, involving no new ground altering activity, and having no significant impact on public access to beach and ocean recreational areas; on public property, such temporary events and signage under a county or state permitting authority.

(13) Repair, construction, or reconstruction of critical public infrastructure beyond the activities allowed pursuant to section 12-203-10.

(14) Utility poles, tsunami sirens built to approved standard specifications, and accessory utility structures along existing utility corridors.

(15) Uses and structures established pursuant to section 12-203-6(b).

(16) Additions and alterations of structures, or intensification of use, when the director has determined that they involve only existing lawful structures and uses to which they are subordinate and which are protected for their useful life by being located mauka of public facilities that are protected by shoreline hardening or natural features not subject to erosion, or the director determines that alterations will elevate the

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- 1 entire structure to be adequately protected for its useful life.  
2 (17) For areas protected by beach nourishment, new non-  
3 habitable structures and uses within forty feet immediately  
4 makai of a lot's minimum buildable depth, that are accessory  
5 to lawful structures and uses and that will be protected for  
6 their useful life by being located mauka of shorelines  
7 protected by beach nourishment, provided that the owner of  
8 the lot shall, prior to construction, record with the Bureau of  
9 Conveyances and encumber the property with a unilateral  
10 agreement to remove such structures and uses when  
11 threatened by coastal hazards and to not seek protection with  
12 shoreline hardening.  
13 (18) Structures, such as wooden dune walkovers, that will  
14 enhance either vertical or lateral public shoreline access  
15 provided that they do not adversely affect beach processes,  
16 artificially fix the shoreline, or interfere with public access or  
17 public views to and along the shoreline.  
18 (19) Exterior installation on and maintenance, repairs, and  
19 renovations to existing, lawfully established structures that  
20 involve no ground disturbance and that are nonstructural,  
21 such as signage, wireless antennae and other transmission  
22 equipment, satellite dishes, and roof mounted equipment,  
23 such as photovoltaic and solar panels.  
24 (20) Patching, repairs, and resurfacing of existing driveways and  
25 parking lots.  
26 (21) When associated with an existing lawful structure, site  
27 improvements, involving limited ground disturbance, such as  
28 installation of turf, shallow landscaping, and irrigation, and  
29 installation of asphalt or concrete slabs and driveways.  
30 (22) When associated with an existing lawful structure, site  
31 improvements, involving limited ground disturbance more  
32 than six inches deep such as the installation, removal, or  
33 maintenance of trees and shrubs, utility pedestals, ground  
34 signs, water, sewer, and conduit lines, walls and fences up to  
35 four feet in height, telephone and light poles, mailbox posts,  
36 and solar panels, provided that that this does not include new  
37 wireless telecommunications towers, windmills and wind  
38 turbines.

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

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

5 (1) All new structures shall be elevated on pilings or columns, in  
6 accordance with the standards for development in chapter  
7 19.62, Maui County Code, relating to coastal high hazard  
8 districts, so that the lowest horizontal portion of the structural  
9 members of the lowest floor is elevated above the base flood  
10 elevation, or above existing grade, whichever is greater.

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

16 (3) The construction of shoreline hardening structures or  
17 activities shall be prohibited throughout the life of the  
18 structure or activity.

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

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

30  
31 **§12-203-13 Request for [a determination of] approval of**  
32 **structures and activities in the shoreline [setback] area.** (a) [All]Other  
33 than the exceptions listed in §12-203-10,all proposed structures and  
34 activities in the shoreline [setback] area shall be subject to an assessment  
35 made by the director.

36 A request for approval of structures and activities in the shoreline  
37 [setback] area shall be submitted to the department on a form prescribed  
38 by the director and shall be accompanied by applicable information to

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

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

## 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 an exemption determination;
- (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] constructed features and conditions within the shoreline [setback] area;
  - (B) Existing natural and [man-made] constructed 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;



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

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1 which is printed and issued at least twice weekly in the  
2 County of Maui, which informs the public of the subject  
3 matter of the application and which identifies the date and  
4 time by which a written request for a public hearing must be  
5 received by the commission; or

- 6 (4) Maintenance, repair, reconstruction, and minor additions or  
7 alternations of legal boating, maritime or water sports  
8 recreational facilities, which result in little or no interference  
9 with natural shoreline processes.]

10 [Eff 11/27/03] (Auth: HRS §§205A-43.5, 205A-46, 343-5; Maui  
11 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.5, 205A-46, 343-  
12 5)

13  
14 **§12-203-15 Criteria for approval of a variance.** (a)A

15 variance may be granted for a structure or activity otherwise  
16 prohibited by this chapter, if the commission finds in writing, based  
17 on the record presented, that the proposed structure or activity is  
18 necessary for or ancillary to:

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

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- 1 facilities or improvements are not allowed within the shoreline  
2 area; and provided further that, the commission imposes  
3 conditions to prohibit any structure seaward of the existing  
4 shoreline unless it is clearly in the public interest; or
- 5 (10) Moving of sand from one location seaward of the shoreline to  
6 another location seaward of the shoreline; provided that, the  
7 commission also finds that the moving of sand will not  
8 adversely affect beach processes, will not diminish the size of  
9 the public beach, and will be necessary to stabilize an eroding  
10 shoreline.
- 11 (b) A structure or activity may be granted a variance upon  
12 grounds of hardship if:
- 13 (1) The applicant would be deprived of reasonable use of the land  
14 if required to fully comply with the shoreline [setback] rules;
- 15 (2) The applicant's proposal is due to unique circumstances and  
16 does not draw into question the reasonableness of the  
17 shoreline [setback] rules; and
- 18 (3) The proposal is the practicable alternative [which] that best  
19 conforms to the purpose of [the shoreline setback] these rules.
- 20 (c) Before granting a hardship variance, the commission must  
21 determine that the applicant's proposal is a reasonable use of the land.  
22 Because of the dynamic nature of the shoreline environment,  
23 inappropriate development may easily pose a risk to individuals or to the  
24 public health and safety. For this reason, the determination of the  
25 reasonableness of the use of land should properly consider factors such  
26 as shoreline conditions, erosion, surf and flood conditions, and the  
27 geography of the lot.
- 28 (d) For purposes of this section, hardship shall not include:  
29 economic hardship to the applicant; [county] County zoning changes,  
30 planned development permits, cluster permits, or subdivision approvals  
31 after June 16, 1989; any other permit or approval [which] that may have  
32 been issued by the commission. If the hardship is a result of actions by  
33 the applicant, such result shall not be considered a hardship for purposes  
34 of this section.
- 35 (e) No variance shall be granted unless appropriate conditions  
36 are imposed:
- 37 (1) To maintain and require safe lateral access to and along the  
38 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; and  
13 (6) To require that the owner of a lot for which a variance is  
14 granted shall, prior to construction or activity that relies on  
15 the variance, record with the Bureau of Conveyances and  
16 encumber the property with a unilateral agreement to not seek  
17 protection with shoreline hardening for any structures or  
18 other work benefitting from the variance.  
19 (f) Notwithstanding any provision of this section to the contrary,  
20 the commission may consider granting a variance for the protection of a  
21 legal structure or public infrastructure; provided that, the structure is at  
22 risk of damage from coastal erosion, poses a danger to the health, safety  
23 and welfare of the public, and is the best shoreline management option in  
24 accordance with relevant state policy on shoreline hardening.  
25 (g) The applicant may apply to the department for an amendment  
26 to the variance in a manner consistent with the procedures of section 12-  
27 202-17 of the special management area rules of the Maui planning  
28 commission. [Eff 11/27/03] (Auth: HRS §205A-43.5, 205A-46; Maui  
29 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.5, 205A-46; MCC  
30 Chapters 19.62, 20.08)

**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, 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

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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, in addition to the foregoing and any other penalties;  
17 and that the landowner or violator may appeal the notice of  
18 violation pursuant to section 12-203-18 within thirty days of  
19 the date of service. The filing of an appeal shall not correct or  
20 suspend any violation or stay the assessment and  
21 accumulation of fines. The following criteria shall be  
22 considered in assessing the initial and daily fines:  
23 (A) Previous violations by the same person;  
24 (B) The degree of damage to the environment, including  
25 damage to the shoreline and marine resources;  
26 (C) The degree of cooperation provided by the violator  
27 during the investigation;  
28 (D) Amount necessary to deter future violations; and  
29 (E) Evidence of circumstances beyond the control of the violator.  
30 (3) The department, in consultation with the department of the  
31 corporation counsel, may institute a civil action in any court  
32 of competent jurisdiction for the enforcement of any  
33 settlement agreement or order issued pursuant to this  
34 section.  
35 (4) Nothing in this section shall prohibit the department, through  
36 the corporation counsel, from filing an order or motion directly  
37 with a court in the event that public health, safety and welfare  
38 may be at risk. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-

43, 205A-43.6) (Imp: HRS §43.6)

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

## 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-

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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-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))

**§12-203-21 Service of the notice of appeal.** If the appellant is someone other than the applicant, appellant shall serve a file-marked copy of the appeal by mail or delivery thereof to counsel of record for each other party, or, if a party is not represented by counsel, to the party at the party's last known address. Proof of service shall be filed with the department within seven days after 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))

**§12-203-22 Payment of fees.** Upon the filing of any separate or joint notice of appeal, the appellant shall pay such fees as are set forth in the County budget ordinance. [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))

**§12-203-23 Contested case hearing on appeal.** The commission shall hold a contested case hearing on the appeal. The director, the appellant, and, where the appellant is someone other than the applicant, the applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of chapter 12-201 of the rules of practice and procedure for the Maui planning commission, relating to petitions to intervene, contested case procedures, and [post hearing] post-hearing procedures, respectively,



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1 shall govern the proceedings, except that petitions to intervene on an  
2 appeal shall be filed with the commission no later than ten days after the  
3 meeting at which the commission received notification of the filing of an  
4 appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6,  
5 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS  
6 §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County  
7 Charter §§8-8.4, 13-2(15))  
8

9 **§12-203-24 Disposition of appeal.** The commission may affirm the  
10 decision of the director, or may reverse or vacate and remand the decision  
11 of the director if the substantial rights of the petitioner may have been  
12 prejudiced because the decision is:

13 (1) Based on clearly erroneous findings of material fact or  
14 erroneous application of the law; or

15 (2) Arbitrary or capricious in its application; or

16 (3) A clearly unwarranted abuse of discretion. [Eff 11/27/03]  
17 (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui  
18 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5,  
19 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))  
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