

TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 02

MAUI PLANNING COMMISSION

CHAPTER 203

**SHORELINE RULES FOR THE MAUI PLANNING COMMISSION**

Subchapter 1      General Provisions

- §12-203-1      Title
- §12-203-2      Purpose
- §12-203-3      Applicability
- §12-203-4      Definitions
- §12-203-5      Severability

Subchapter 2      Shoreline Setback Lines; Shoreline Area

- §12-203-6      Establishment of shoreline setback lines
- §12-203-7      Request for [a shoreline setback determination or an annual erosion hazard rate amendment] an amendment to a shoreline setback line established by the erosion hazard line
- §12-203-8      Determination of the shoreline
- §12-203-9      Site plans
- §12-203-10     Structures and activities subject to these rules
- §12-203-11     Prohibited activities within the shoreline area
- §12-203-12     Permitted structures and activities within the shoreline [setback] area.
- §12-203-13     Request for [a determination] approval of structures and activities in the shoreline [setback] area

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

## **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] constructed 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] constructed 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 replacement of structures damaged or destroyed by ocean conditions may cause an economic hardship to other flood insurance policy holders by the increase in premiums. Consequently, 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 accordance with the Hawaii coastal zone management law, HRS chapter 205A. [Eff 11/27/03] (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)

**§12-203-3 Applicability.** These rules shall be applicable to all lands located within the shoreline area of the Island of Maui, County of Maui, State of Hawaii. [Eff 11/27/03] (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)

**§12-203-4 Definitions.** For purposes of this chapter, unless it is

September 3, 2019

plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

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

["Annual erosion hazard rate" means the annual rate of coastal erosion calculated according to the methodology developed by the university of Hawaii along transects placed at regular intervals of approximately sixty-six feet and as indicated on maps on file with the department. Said rates shall be updated on a regular basis at least once every ten years, provided funding is budgeted for the purpose; or pursuant to an annual erosion hazard rate amendment approved in accordance with section 12-203-7. Land area outside of the boundary of 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.

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

"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 or cobble fill consistent with existing beach conditions 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.

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

September 3, 2019

"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] that 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, such as sand fill, drift fencing, or revegetation.

"Erosion hazard line" means the mapped 80 percent cumulative probability contour of the coastal erosion hazard zone with 3.2 feet of sea level rise approved by the Hawaii Climate Change Mitigation and Adaptation Commission as part of the 2017 Hawaii Sea Level Rise Vulnerability and Adaptation Report, as accessible within the Hawaii Sea Level Rise Viewer hosted by the Pacific Islands Ocean Observing System, and as may be updated from time to time.

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

"Imminently threatened" means within twenty feet of the shoreline.

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

- (1) Was completely built prior to June 22, 1970; or
- (2) Received either a building permit, board approval, or shoreline area variance prior to June 16, 1989; or
- (3) Was outside the shoreline area when it received either a building permit or board approval.

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

"Irregularly shaped lot" means a flag lot, non-rectangular, parcel, lot bordered by ocean on two or more sides, headland, or peninsula.

"Minimum buildable depth" means the minimum depth that a

structure may be constructed taken from a line running makai of and parallel to the frontyard setback, not to exceed [thirty-five] forty feet in length.

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

"Minor structure" means the following:

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

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

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

(C) landscaping in conjunction with irrigation systems;

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

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

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

(2) a portable or movable walkway for public access or, as determined by the director, a structure primarily benefitting the public.

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

["Overlay" means the more mauka (landward) segments of each line, in circumstances where the methods of 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 include: [but not be 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] that identifies the existing

September 3, 2019

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;] The purpose of these rules; 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
  - (C) Chapter 6E, HRS, relating to historic preservation.

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

"Repair" means the reconstruction or renewal of any part of an existing structure, but not the entire structure, solely for the purpose of its maintenance.

"Shoreline", as defined in HRS [205A,] section 205A-1 as amended, means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the

September 3, 2019

highest wash of the waves occurs, usually evidenced by the edge of natural rather than artificially induced vegetation growth, or the upper limit of debris left by the wash of the waves [which] that has been certified by the board of land and natural resources for a duration determined by the board.

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

"Shoreline hardening" means features such as seawalls, revetments, riprap and bulkheads, that block or significantly inhibit landward movement of the shoreline and are used to protect structures or other features from erosion and other coastal hazards.

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

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

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

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

September 3, 2019

**§12-203-5 Severability.** If any provision or part of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [Eff 11/27/03] (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)

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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:

(i) [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;

(ii) [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; however, if the shoreline is established by a certified shoreline survey, then the shoreline setback line shall be calculated 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) For 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] Notwithstanding subsection (ii), for areas where there is no mapped erosion hazard line but that include irregularly shaped lots, or where in those areas cliffs, bluffs, or other topographic features inhibit the safe measurement of boundaries [and/or] or the shoreline, the shoreline setback line will be equivalent to twenty-five percent of the lot's depth as determined by the [Director,] director, to a maximum of one hundred fifty feet from the shoreline.

(b) Notwithstanding any provision of this section to the contrary, any structures and activities not otherwise allowed under these rules may be

September 3, 2019

built and carried out within [a lot shall have a shoreline setback line at a distance from the shoreline that provides for the] a lot's minimum buildable depth; provided that, in no case shall [the shoreline setback line] such structures and activities be located less than twenty-five feet from the shoreline. The owner of a lot for which development is approved relying upon the minimum buildable depth shall, prior to construction, record with the Bureau of Conveyances and encumber the property with a unilateral agreement to not seek protection with shoreline hardening, and to recognize that the risks of building within the minimum buildable depth may require mitigation such as elevating structures.

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

**§12-203-7 Request for [a shoreline setback determination or an annual erosion hazard rate amendment.] an amendment to a shoreline setback line established by the erosion hazard line or the approximate shoreline mapped by the department.** (a) A request for [a shoreline setback determination or an annual erosion hazard rate amendment] an amendment to a shoreline setback line established by the erosion hazard line or the approximate shoreline mapped by the department 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,] consideration of the request, which could include [but not be limited to] a certified shoreline survey; construction plans, if any; existing and finish contours; photographs of the shoreline [setback] area; written [reasons] justification addressing compliance with the criteria set forth in these rules; and analysis of coastal erosion and shoreline processes. The director shall approve, approve with conditions, or deny a request for a shoreline setback [determination] line amendment in accordance with [the criteria set forth in] these rules. The director shall transmit any request for [an annual erosion hazard rate] a shoreline setback line amendment with all relevant information to appropriate agencies for review and comment. Upon consultation with various agencies, the director shall approve or approve with conditions, a request for [an annual erosion hazard rate] a shoreline setback line amendment if the director finds that based on clear and convincing evidence the best

September 3, 2019

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

(b) The director shall notify the commission, at the commission's next regularly scheduled meeting, of any [application for, or] issuance of[,] a shoreline setback [determination or annual erosion hazard rate] amendment, 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.] line amendment. [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 the duration established by the board of land and natural resources, except for those portions of the shoreline which are fixed by [man-made] constructed 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] constructed 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; exceptions.** All structures and activities located or proposed to be located within the shoreline area shall be subject to these rules and conform to the requirements of this chapter. Other than the following exceptions, [The] the requirements of this chapter shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately inland of the shoreline area shall also be subject to these rules until a certified and confirmed survey map, prepared in accordance with the provisions of section 12-203-8 herein, is filed with the department.

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

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

(b) Normal and customary agricultural activities on land currently or historically used for such activities, provided that appropriate best management practices are implemented to minimize impacts to nearshore waters;

(c) Changes in uses or operations, including changes between short-term and long-term occupancy of dwelling units and various uses of beach parks that are under county or state jurisdiction, that do not increase the density or intensity of use. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements or storage needs, or other effects as determined by the director.

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

(e) Nonstructural interior maintenance, repairs, and renovations to existing, lawfully established structures that involve no expansion, no ground disturbance, and do not increase the density or intensity of use, such as paint, floors, carpets, cabinets, and interior walls and doors. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements or storage needs, or other effects

September 3, 2019

as determined by the director;

(f) Nonstructural exterior maintenance, repairs and renovations to existing, lawfully established structures that involve no ground disturbance, such as doors, windows, shutters, siding, roof repairs or replacement and, for structures erected in 1981 or after, to protect against impacts from lead-based paint, painting with related preparatory work;

(g) Operation and maintenance activities for public roadways and drainage systems, subject to approval by the applicable state or county agency, such as vegetation-management activities, including tree trimming and cutting and vegetation removal, and clearing obstructions, provided that beach sand is placed on adjacent beach and dunes if there is an adjacent beach or dune and the obstruction consists solely of beach sand.

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

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

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

(2) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity or would otherwise be detrimental to the shoreline environment; or

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

September 3, 2019

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. [Said variance/approval] The variance or approval shall [be] remain 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 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, accidental means, or other calamity, provided that:

September 3, 2019

- (A) The structure was not damaged by coastal hazards beyond 50 percent of its replacement value[;], except that a lawful nonconforming seawall or similar shoreline hardening protecting a habitable structure or public infrastructure may be repaired even if 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 203-14 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 and shall be in the same location, 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 construction, record with the Bureau of Conveyances and encumber the property with a unilateral agreement to not seek protection with shoreline hardening.
- (7) Qualified demolition.
  - (8) [Beach nourishment/dune restoration] Beach-nourishment, dune-restoration or sand pushing projects approved by all applicable governmental agencies.
  - (9) A structure or activity that has been determined by the director to be a minor structure or minor activity within the shoreline [setback] area [which] that does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline and which meets the purpose of this chapter[, HRS chapter 205A, as amended, and chapter 19.62, Maui County Code, relating to coastal high hazard districts.], the building code, flood hazard regulations, and special management area requirements.
  - (10) [Emergency protection of an imminently threatened legally

September 3, 2019

habitable structure, or infrastructure at imminent risk of failure which would substantially affect public health or safety, provided that:

- (A) The protection is temporary and is removed within one hundred eighty calendar (180) days of installation;
- (B) The protection receives approval in accordance with section 12-202-16, special management area 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(c).

September 3, 2019

- (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 entire structure to be adequately protected for its useful life.
- (17) For areas protected by beach nourishment, new non-habitable structures and uses within forty feet immediately makai of a lot's minimum buildable depth, that are accessory to lawful structures and uses and that will be protected for their useful life by being located mauka of shorelines protected by beach nourishment, provided that the owner of the lot shall, prior to construction, record with the Bureau of Conveyances and encumber the property with a unilateral agreement to remove such structures and uses when threatened by coastal hazards and to not seek protection with shoreline hardening.
- (18) Structures, such as wooden dune walkovers, that will enhance either vertical or lateral public shoreline access provided that they do not adversely affect beach processes, artificially fix the shoreline, or interfere with public access or public views to and along the shoreline.
- (19) Exterior installation on and maintenance, repairs, and renovations to existing, lawfully established structures that involve no ground disturbance and that are nonstructural, such as signage, wireless antennae and other transmission equipment, satellite dishes, and roof mounted equipment, such as photovoltaic and solar panels.
- (20) Patching, repairs, and resurfacing of existing driveways and parking lots.
- (21) When associated with an existing lawful structure, site improvements, involving limited ground disturbance, such as installation of turf, shallow landscaping, and irrigation, and installation of asphalt or concrete slabs and driveways up to six inches deep and up to three hundred square feet.

September 3, 2019

(22) When associated with an existing lawful structure, site improvements, involving limited ground disturbance more than six inches deep such as the installation, removal, or maintenance of trees and shrubs, utility pedestals, ground signs, water, sewer, and conduit lines, walls and fences up to four feet in height, telephone and light poles, mailbox posts, and solar panels, provided that that this does not include new wireless telecommunications towers, windmills and wind turbines.

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

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

(1) All new structures shall be elevated on pilings or columns, in accordance with the standards for development in chapter 19.62, Maui County Code, relating to coastal high 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

September 3, 2019

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

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

(b) The director shall notify the commission, at the commission's next regularly scheduled meeting, of any application for, or issuance of, approval of structures and activities in the shoreline [setback] area, receipt of which shall be acknowledged by the commission. Such notification shall include[, but not be limited to,] the name of each applicant[, and the location, [and purpose of the development, 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-43.6, 205A-44, 205A-45)

### 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, 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;
- (7) Detailed justification of the proposed project[, which] that addresses the purpose and intent of these rules and the

September 3, 2019

criteria for approval of a variance;

- (8) Analysis of historical and anticipated coastal erosion [rates] and coastal processes[;] related to the subject property; and
- (9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS chapter 205A, part III, and this chapter, the director shall submit the application to the commission. If the application is determined to be incomplete by the director, the director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The director shall submit a written report, and all relevant documents and information to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property [which abut] that abuts or [are] is adjacent to the parcel that is the subject of the application. Not less than thirty days prior to the public hearing date, the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

[(d) Exceptions. Prior to action on a variance application, the commission may waive a public hearing on the application for:

- (1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;
- (2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;
- (3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five calendar days after 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

September 3, 2019

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 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] that 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 improvements are not allowed within the shoreline area;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that, the commission finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; and provided further that, the commission imposes

September 3, 2019

conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or

- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that, the commission also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of the public beach, and will be necessary to stabilize an eroding shoreline.

(b) A structure or activity may be granted a variance upon grounds of hardship if:

- (1) The applicant would be deprived of reasonable use of the land if required to fully comply with the shoreline [setback] rules;
- (2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline [setback] rules; and
- (3) The proposal is the practicable alternative [which] that best conforms to the purpose of [the shoreline setback] these rules.

(c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions, and the geography of the lot.

(d) For purposes of this section, hardship shall not include: economic hardship to the applicant; [county] County zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; any other permit or approval [which] that 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

September 3, 2019

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; and
- (6) To require that the owner of a lot for which a variance is granted shall, prior to construction or activity that relies on the variance, record with the Bureau of Conveyances and encumber the property with a unilateral agreement to not seek protection with shoreline hardening for any structures or other work benefitting from the variance.

(f) Notwithstanding any provision of this section to the contrary, the commission may consider granting a variance for the protection of a legal 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 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

September 3, 2019

weeks in a newspaper that is printed and issued at least twice weekly in the County and is generally circulated through the County. The date of service shall be the date on which the certified or registered mail is accepted, the date of regular mail delivery confirmation, the date of personal service, the date of posting on the property, or the date of the last publication in the newspaper. If the director uses more than one method of service, then the date of service shall be the later of the dates of service.

- (2) The notice of violation and order shall include the specific section of these rules that has been violated; the nature of the violation; and the remedy required or available, including cessation or removal of the violation, subject to applicable permitting requirements; that an initial civil fine be paid not to exceed \$100,000 per violation; that a civil fine be paid not to exceed \$10,000 per day for each day in which the violation persists, in addition to the foregoing and any other penalties; and that the landowner or violator may appeal the notice of violation pursuant to section 12-203-18 within thirty days of the date of service. The filing of an appeal shall not correct or suspend any violation or stay the assessment and accumulation of fines. The following criteria shall be considered in assessing the initial and daily fines:
- (A) Previous violations by the same person;
  - (B) The degree of damage to the environment, including damage to the shoreline and marine resources;
  - (C) The degree of cooperation provided by the violator during the investigation;
  - (D) Amount necessary to deter future violations; and
  - (E) Evidence of circumstances beyond the control of the violator.
- (3) The department, in consultation with the department of the corporation counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.
- (4) Nothing in this section shall prohibit the department, through the corporation counsel, from filing an order or motion directly with a court in the event that public health, safety and welfare

September 3, 2019

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-

September 3, 2019

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

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

September 3, 2019

procedures, and [post hearing] post-hearing procedures, respectively, shall govern the proceedings, except that petitions to intervene on an appeal shall be filed with the commission 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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