January 26, 2021

MEMORANDUM

TO: Lawrence Carnicelli, Chair
    and Members of the Maui Planning Commission

FROM: Michele McLean, Planning Director

SUBJECT: PROPOSED AMENDMENTS TO THE SPECIAL MANAGEMENT
        AREA (SMA) RULES AND THE SHORELINE RULES FOR THE
        MAUI PLANNING COMMISSION

For several years, the Department of Planning (Department), particularly the shoreline team, has worked on proposed rule amendments to the Commission’s SMA and shoreline administrative rules.

SMA SUMMARY

The original and general purpose of the SMA rule changes is to describe and codify a group of minor actions that are eligible for a SMA exemption, but nonetheless currently have to undergo an assessment, so that these actions can be “categorically exempt” and not be required to submit assessment applications. The Department refers to these as “no needs.”

Other proposed changes to the SMA rules would (a) delete definitions that are not used in the rules, (b) clean-up the application requirements and procedures so that they are consistent with State law, (c) clarify and improve emergency permit procedures, (d) provide clear guidelines for permit amendments, and (e) improve the enforcement provisions (including authorizing the director to settle violations when the fines do not exceed $50,000).

SHORELINE SUMMARY

The proposed shoreline rule changes are a more significant policy shift: they would change the existing shoreline setback formula to follow the sea level rise erosion projections as depicted on
the State sea level rise viewer, which has notably just been updated to incorporate more recent shoreline positions. In some cases, this will result in a smaller shoreline setback than currently exists, but in many cases, it will increase the shoreline setback, often significantly. Where the viewer does not show sea level rise, or where there are special geologic considerations, the Department will map the shoreline setback. One benefit is that a certified shoreline survey will not be required in most situations, thus eliminating this time-consuming and expensive process.

Other proposed changes to the shoreline rules clarify what structures are allowed in the setback, and create a new set of actions that are allowed and that do not need approval from the Department (similar to the SMA “no needs”).

PROCESS

The Department conducted a series of outreach meetings throughout 2019 with interest groups such as the Realtors Association of Maui and the Maui Facilities and Engineering Leadership Council, and hosted public meetings in West Maui, South Maui, the North Shore and Wailuku. The Department also sent postcards to all property owners located in the proposed new shoreline setback.

These meetings concluded at the end of 2019, and it was the Department’s intent to make revisions to the proposed rules based on the feedback received, and then do another round of outreach in early 2020. That, of course, did not happen due to the coronavirus pandemic, and this effort was put on hold for several months. The Department is now bringing the proposed rule amendments to the Commission in a workshop, so that they may be considered for adoption before the terms of two Commissions members expire at the end of March.

The Department will continue outreach by email and videoconference so that the public and organizations who are interested in these issues can provide input and testimony at the January 26 workshop and later when the rules are posted for public hearing and adoption.

HIGHLIGHTS

The 2019 outreach meetings demonstrated widespread support for the proposed SMA rules, particularly the “no needs,” and for many provisions in the proposed shoreline rules. However, there are serious concerns over the shoreline rules by owners whose properties are not currently in the shoreline setback but would be located in the new shoreline setback. The current shoreline rules do not allow structures in the setback to be rebuilt if they are damaged by coastal hazards. The proposed rule changes initially applied the same restriction to the new setback; the latest version, however, has three options in this regard: one to keep this restriction, one to allow rebuilding if the structure is not destroyed by more than 50 percent of its replacement value, and one to allow complete rebuilding.
The other area of concern was with the sea level rise viewer and its lack of consideration for the geology in some areas that are less susceptible to erosion than the viewer depicts. This was addressed by additional research and mapping performed by the University of Hawaii, so that these areas will be treated differently.

The Department appreciates the Commission’s consideration and input, and hopes to schedule these proposed rule changes for adoption in March.
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§12-202-16  Special management area emergency permit procedures

§12-202-17  Amendments to [and determinations of] permit [terms, conditions, and time stipulations] approvals.

§12-202-18  (Reserved)

§12-202-19  (Reserved)

§12-202-20  (Reserved]

Subchapter 3  Procedures to Adopt Special Management Area Rules; Declaratory Rulings; [and] Adoption and Amendment of Boundaries and Maps; Enforcement; and Appeals

§12-202-21  Petition and procedures to adopt, amend, or repeal special management area rules; declaratory rulings

§12-202-22  Adoption and amendment of special management area boundaries and maps

§12-202-23  Enforcement

§12-202-24  Conflicts with other laws

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SUBCHAPTER 1

GENERAL PROVISIONS


§12-202-2 Purpose. The purpose of these rules is to implement Hawaii Revised Statutes (HRS) chapter 205A, relating to coastal zone management and special management areas, and to establish application procedures for special management area assessments, emergency permits, minor permits, and use permits, time periods within which hearings must be held, and procedures to provide notice to individuals whose property rights may be affected. The rules further the policy of the [state] State to preserve, protect and where possible, restore the natural resources of the coastal zone. The rules also assist the commission in giving full consideration to the [state] State policy of establishing special controls on development within the areas along the shoreline [to avoid permanent loss of valuable coastal resources and foreclosure of land use and management options of these resources, and] to provide adequate access to beaches, recreational areas, and natural reserves. [Eff 1/1/94] (Auth: HRS §§91-2, 205A-27, 205A-29, 205A-30) (Imp: §§ HRS 205A-1 to 205A-33)

§12-202-3 Scope.[and exemptions.] (a) The rules contained in this chapter shall apply to the special management area on the island of Maui as designated on the special management area maps and specifically excluding the islands of Kahoolawe, Molokai, and Lanai.

(b) [The] At the discretion of the director, the rules in this chapter [shall] may not apply to special management area and shoreline setback area applications that have been deemed complete by the director before the effective date of these rules. An application shall be deemed complete by the director upon receipt of final agency comments and [a letter is] notification being sent by the [director] department to the applicant to that effect. Applications deemed complete [shall] may be processed under the rules in effect at the
time the application was deemed complete. [Eff 1/1/94] (Auth: HRS §§46-4, 91-2, 205A-27, 205A-29) (Imp: HRS §205A-23)

§12-202-4 Definitions. For the purposes of this chapter, and unless it is plainly evident from the context that a different meaning is intended, the definitions of this chapter shall be those set forth in sections 205A-1, 205A-22, and 205A-41, HRS ([a copy] copies of which shall be provided pursuant to section 12-202-7), and as follows:

"Categorical exemption" means a proposed use, activity, or operation for which a special management area assessment, emergency permit, minor permit, or use permit is not required, pursuant to section 12-202-11.5.

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

"Commission" means the Maui planning commission.

"Crops" means agricultural produce or parts of plants or trees cultivated for commercial or personal use, including but not limited to the raising of livestock and aquaculture.

"Cultural resources commission" means the Maui County cultural resources commission established under chapters 2.40 and 2.88 of the Maui County Code.

"Debris line" means a line marking the landward limit of debris deposits resulting from the upper reaches of the wash of waves.

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

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area as defined by section 205A-22, HRS, as amended.

"Director" means the director of the department of planning of the County of Maui.

"Director of public works [and environmental management]" means the director of the department of public works [and environmental management] of the County of Maui.

"Environmental assessment" or "environmental impact statement" [or "EIS"] means an informational document that is
prepared in compliance with chapter 343, HRS, and the rules of the
office of environmental quality control.

"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.

["Estuarine sanctuary" means a research area which may
include any part or all of an estuary, adjoining transitional areas,
and adjacent uplands, constituting to the extent feasible a natural
unit, set aside to provide scientists and students the opportunity to
examine over a period of time the ecological relationships with the
area.]

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

"Exempt action" or "exemption" means a proposed use,
activity, or operation that is not a development as determined by the
director and as defined by section 205A-22, HRS, and as otherwise
provided herein.

["Family" means a family as defined in title 19 of the Maui
County Code, as amended.]

"HRS" means the Hawaii Revised Statutes, as amended.
"Hana advisory committee" means the Hana advisory
committee to the Maui planning commission pursuant to chapter
2.28 of the Maui County Code.

["NBCIDAC" means the Napili Bay civic improvement district
advisory committee.

"Nonstructural improvements to existing commercial
structures" means non-habitable improvements to existing
structures, which improvements are adjunct to the main structure
not to exceed fifty square feet in floor area; or temporary structures
for special events not to exceed fourteen consecutive days.
Improvements may include, but not be limited to, window or door
replacement or addition, reroofing, storage additions, signage, tents,
and booths.]

“Nonsubstantive amendment” means a proposed change to a
permit scope that has no impact to the special management area or
to the condition or capacity of infrastructure that is discernibly
different than that associated with the original approval.

"Owner" means all holders of an equitable or legal interest in
real property on the island of Maui, including any lessee holding
under a recorded lease with a term of five years or more.

"Plot plan" means a detailed map prepared to [a] scale, based
upon an accurate instrument survey, defining and showing the
design of the proposed action and the existing physical condition of
the land, including [but not limited to] parcel boundaries,
topography, natural and [man made] constructed features, trees,
and structures. The director may require the applicant to set forth
in the plot plan cross sections of the site at designated locations.

"Proposed action" means any use, activity, or operation
proposed by an applicant [on land] within the special management
area.

"Renovation" means the remodel, 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.

“Reconstruction” means rebuilding of an entire structure.

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

“Sand” means particles of mineralogic or rock material
ranging in diameter from 0.0625 millimeters to millimeters that
shall be substantially clean of rubble and debris; shall contain no
more than fifteen percent volume of silt, the particles of which range
in diameter from 0.039 millimeters to 0.0625 millimeters, and clay,
the particles of which range in diameter from 0.00006 millimeters to
0.0039 millimeters; and shall not consist of artificially crushed coral
as defined by chapter 20.08, Maui County Code.

[“Scenic amenities” means significant coastal features
including, but not limited to, areas of vegetation, growth, land forms
such as dunes or rock outcroppings, mountain and seaward visual
corridors, beaches, aquatic areas, and archeological and historic
sites.

"Shoreline survey" means the actual field location of the
shoreline prepared by a land surveyor registered in the State of
Hawaii. Such survey maps developed by the registered land
surveyor shall bear the surveyor’s signature and date of field survey
and the certifying signature and date of the chairman of the board of land and natural resources."

"Single-family residence" means a one single-family dwelling and any accessory dwelling all accessory structures thereto, including one accessory dwelling as defined in and provided by title 19 of the Maui County Code, as amended, that together can be considered an exempt action pursuant to section 205A-22, HRS.

"Urban design review board" means the Maui County urban design review board as established under chapters 2.26 and 2.40 of the Maui County Code, as amended.

"Use" means a use as defined in title 19 of the Maui County Code, as amended.

"Vegetation growth" means any plant, tree, shrub, grass, or groups, clusters, or patches of the same naturally rooted and growing.

"Vegetation line" means a line marking the seaward limit of vegetation growth. [Eff 1/1/94; am 9/28/97, am and comp 9/25/03, am and comp 4/21/08] (Auth: HRS §§91-2, 205A-29) (Imp: HRS §205A-29)

§12-202-5 Severability. If any provision of these rules or the application thereof to any person is held invalid, the invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application. To that extent the provisions of these rules are severable. [Eff 1/1/94] (Auth: HRS §§91-2, 205A-29) (Imp: HRS §§91-2, 205A-9)

§12-202-6 Special management area boundaries and maps. The special management area shall be all lands so designated on the maps adopted by the commission as of November 19, 1975, or as amended pursuant to section 205A-23, HRS, which maps are in the keeping of the department. These maps shall be the official special management area to be administered and enforced under these rules. [Eff 1/1/94] (Auth: HRS §§91-2, 205A-23, 205A-27, 205A-29) (Imp: HRS §205A-23)

§12-202-7 Implementation of rules. The director shall provide such applications in a form as may be necessary to accomplish the intent of these rules, and shall provide upon request, a copy of sections of Hawaii Revised Statutes referenced in these rules. Such copies shall be provided as a convenience to the public.
and shall be accompanied with a disclosure cautioning readers that reproduced sections should not be relied upon to be accurate, complete, or applicable to any particular application and that reference should be made to the Hawaii Revised Statutes, all supplements thereto and [Acts] acts of the [state] State legislature. The director may also publish with the rules, or separately, tables, charts, or other graphics that will serve to clarify or illustrate various provisions. A charge may be imposed for copying costs. [Eff 1/1/94, am and comp] (Auth: HRS §§91-2, 205A-290) (Imp: HRS §205A-29)

§12-202-8 (Reserved)
§12-202-9 (Reserved)

SUBCHAPTER 2

SPECIAL MANAGEMENT AREA PERMIT PROCEDURES

§12-202-10 Special management area objectives and policies. (a) The objectives and policies of this chapter shall be those set forth in section 205A-2, HRS, as amended. (b) In implementing these objectives and policies, the department or the commission, as appropriate, shall fully consider ecological, environmental, recreational, cultural, historic, and [aesthetic values] scenic resources as well as needs for economic development[,] and hazard mitigation. [Eff 1/1/94] (Auth: HRS §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-2, 205A-4)

§12-202-11 Special management area review guidelines. The review guidelines set forth in section 205A-26, HRS, as amended, shall be used by the director and the commission, as appropriate, for the review of developments proposed in the special management area. [Eff 1/1/94] (Auth: HRS §§91-2, 91-4.2, 205A-29) (Imp: HRS §§205A-2, 205A-4, 205A-26)

§12-202-11.5 Special management area categorical exemptions. Pursuant to HRS 205A-22 and 205A-26(2), it is hereby assessed and determined that any use, activity, or operation
listed below is not considered "development" pursuant to section 205A-22, HRS; by its minimal nature, does not have a cumulative impact or a significant environmental or ecological effect on the special management area; and therefore is exempt from any requirements for a special management area assessment or permit. However, such uses, activities, or operations may be subject to other assessment or permitting requirements, such as a building permit, a historic district permit, or a flood development permit, and may require a shoreline setback approval if the action is located within the shoreline area.

Those who intend to conduct any use, activity or operation listed below must complete a declaration form as provided by the department and made accessible to the public.

(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 to control or minimize pesticide and sediment runoff 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 as determined by the director. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements, pursuant to Title 19, Maui County Code, or increased storage needs;

(d) 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, and limited to ninety-six hours including setup and takedown, and involving no new ground altering activity; on public property, such temporary events and signage under a county or state permitting authority; provided that if any event is on the shoreline, then shoreline setback approval is required;

(e) 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 and
natural and cultural resources;

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

(g) Nonstructural exterior maintenance, repairs and
renovations to existing, lawfully established structures that involve
no ground disturbance, such as doors, windows, shutters, siding or
roofs and, for structures erected in 1981 or after, to protect against
impacts from lead-based paint, painting with related preparatory
work; such activities are limited to a cumulative valuation of less
than $500,000 in any 12-month period for a single ownership on a
single lot or set of lots composing a unified building site;

(h) Driveway and parking lot patching and repairs, but not
resurfacing over three hundred square feet;

(i) 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;

(j) 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,
provided that those enclosures will not result in the total floor area
of a single family residence exceeding 7,500 square feet, limited to a cumulative valuation of less than $500,000 in any 12-month period for a single ownership on a single lot or set of lots composing a unified building site;

(k) Site improvements, except in coastal dunes, involving limited ground disturbance, such as minor surface grading and grubbing, installation of turf, shallow landscaping, and irrigation, and installation of asphalt or concrete slabs and driveways, up to six inches deep, up to three hundred square feet, and no more than once in a 12-month period;

(l) Site improvements, except in coastal dunes, involving limited ground disturbance more than six inches deep and up to sixteen square feet no more than once in a 12-month period for holes or trenching, 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 the improvements may be subject to shoreline setback approval pursuant to the Shoreline Rules, and provided that this does not include new wireless telecommunications towers, windmills and wind turbines.

(m) Operation and maintenance activities for existing 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 including beach sand accumulations that block publicly-owned drainage ways, provided that beach sand is placed on adjacent beaches or dunes, and the obstruction consists solely of beach sand that is removed to the minimum volume and depth necessary to allow for passage of flood waters.

(n) 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.

§12-202-12  Assessment and determination procedures.
(a) Any proposed action within the special management
area that could be determined to be a development and that does
not fully fall within any of the categorical exemptions listed in
section 12-202-11.5 shall be subject to an assessment and a
determination made by the director as to whether it is a development
and requires a special management area use permit or minor permit
or is an exempt action. Such assessment shall be pursuant to
sections 205A-22 and HRS 205A-26, HRS, and the significance
criteria set forth in this section.

(b) The applicant or the director may waive assessment and
determination, and the applicant may apply for a special
management area use permit pursuant to the provisions of sections

(c) Assessment applications shall be filed in accordance with
the following submitted in a format prescribed by the department
and shall include the following information and documentation:

1. Any applicant for a proposed action which has been
assessed under the National Environmental Policy Act
(42 U.S.C. §4321, et. seq.) or under chapter 343, HRS,
and for which a findings of no significant impact
(FONSI) has been filed or a required EIS has been
accepted, may apply directly for a special management
area use permit or special management area minor
permit.

2. Any applicant seeking an assessment shall submit an
application form, provided by the department, to the
central coordinating agency. The application shall
require the following information and documentation:

(A) Identification of the applicant [along with] and
documentation of ownership or tenancy and, if the
applicant is not the owner, authorization by the
[owners] owner of the parcel on which the proposed
action is to occur; if the subject parcel has more than
one owner and does not have a managing association
authorized to submit the application, evidence of
notification to all owners shall also be provided;

[(B)]
(2) Tax map key number and acreage or square footage of
the parcel on which the proposed action is to occur;

[(C)]
(3) A location map;

[(D)]
(4) A plot plan, drawn to scale, of the parcel upon which
the proposed action is to occur [, and photographs or
VHS format video tape identifying the area where the
proposed action is to occur]; the plot plan shall identify
any special flood hazard area, 3.2-foot sea level rise
exposure area, and the erosion hazard line within the
parcel, if applicable;

[(E)]
(5) If the proposed action involves new structures, the
applicant shall provide dimensioned floor plans,
sections, and elevations;

[(F)]
(6) Photographs identifying the area where the action is to
occur; video may also be provided;

[(G)]
(7) A shoreline survey if the land abuts the shoreline;
provided, if the proposed action will occur outside of the
shoreline setback area, the director may waive a survey
if:
   (i) the shoreline is fixed by a manmade structure or
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;
   (ii) the shoreline is fixed by natural stabilized
geographic features such as cliffs and rock
formations; or
   (iii) the parcel is not abutting the shoreline.

[(H)]
(7) A written description of the proposed action, including
[but not limited to] the use, length, width, height,
[depth,] building materials, [and statement of objectives;] size of structures in square feet and, if applicable, area, depth, or volume of grubbing, grading, fill, and any other ground-altering activity such as utility installation;

[(F)]

(8) A written description of the anticipated impacts of the proposed action on the special management area that addresses or describes:

[(i)]

(A) The environmental setting of the parcel that is the subject of the proposed action;

[(ii)]

(B) The relationship of the proposed action to [land use plans, policies, and control of the affected area] the objectives and policies of chapter 205A, HRS; zoning; and the general plan;

[(iii)]

(C) The probable impact, including cumulative impacts, of the proposed action on the [environment;] special management area; and

[(iv)] Any probable adverse environmental effects that can be avoided;

(v) Alternatives to the proposed action;

(vi) Mitigating measures] Measures proposed to minimize [impact] potential impacts, including best management practices]; and

(vii) Any irreversible or irretrievable commitment of resources.

(G) A plan of the proposed action designating in dimensions the location of the proposed action on the parcel. If structures are included, the plan shall also show a dimensioned floor plan, sections, elevations, and other physical features;

(H)
A written estimated valuation of the proposed action; the director may require an estimated valuation [as estimated] by an architect, engineer, or contractor licensed by the department of commerce and consumer affairs, State of Hawaii, or [written valuation of the proposed action as estimated by] the administrator of the development services administration, department of public works, County of Maui; The state land use district boundary designation, community plan designation, county zoning designation, and any other special designation, if applicable. A zoning and flood confirmation form, completed and signed by the department unless the Department ceases the use of such form; A draft environmental assessment [and findings of no significant impact or an] or a draft environmental impact statement, if the proposed action is subject to chapter 343, HRS, and the department or commission is the accepting agency; [if required, pursuant] or the agency decision letter and any final environmental document, if the proposed action is subject to chapter 343, HRS, and a government agency has determined that the action is exempt, issued a finding of no significant impact, or accepted a final environmental impact statement; Any oral or written comments received by the applicant from governmental or [non-governmental] nongovernmental agencies, community organizations, applicable design review committees, or individuals with regard to the proposed action, and a summary of the dates and attendance of public meetings held on the proposed action; Any other information and documentation required by the department to properly process the application; and
An administrative fee as established in the county budget.

The assessment application shall be reviewed as follows:

(1) Upon submission of an application that contains all required information, the director may submit the application to appropriate agencies for review and comment. The director shall request such agencies to provide their comments on the application within thirty days from the date on which the application was distributed for review, or as otherwise specified by the director. The director shall determine that the application is complete when adequate agency comments and, if applicable, applicant responses have been received. Upon a determination that an application is complete, the director shall review the proposed action and make a written evaluation as to:

(A) The valuation of the proposed action. The director may request that the applicant's estimates of the total cost or fair market value may be verified by the director of public works and environmental management. The director of public works and environmental management shall use the most recent building valuation data provided by the International Conference of Building Officials. In the event of a conflict between the estimates of the applicant and the director of public works, and environmental management, the higher estimate amount shall be used by the director for the purposes of an assessment of the proposed action; and

(B) Whether the proposed action is a development or is an exempt action or, upon further consideration, the proposed action did not require a special management area assessment
and is a categorical exemption pursuant to section 12-202-11.5; and

(C) The potential adverse environmental and ecological effects based upon the following significance criteria [set forth in subsection (e).]:

[(e) In considering the significance of potential environmental and ecological effects, the director shall evaluate:

(1)]

(i) The sum of those effects that adversely affect the quality of the environment and the ecology, and [shall evaluate] the overall and cumulative adverse effects of the proposed action[.];

[(2)]

(ii) Every phase of a proposed action, its expected primary and secondary consequences, and its cumulative and [short] short-term or long-term effects, including previous and other proposed or completed actions on the same parcel or on related adjacent parcels within the preceding twelve months. A proposed action may have a significant adverse effect on the environment when the proposed action potentially:

(A) Involves an irrevocable [commitment to loss or destruction of] or substantial and detrimental effect on any natural or cultural resources;

(B) Significantly curtails the range of beneficial uses of the environment;

(C) Conflicts with the [county's] County's or the [state's] State's long-term environmental policies or goals;

(D) Substantially and detrimentally affects the economic or social welfare [and activities] of the community, [county,] County, or [state] State;

(E) Involves substantial [secondary impacts, such as population changes and increased effects on] and detrimental effects on public facilities, [streets,] such as increased demand on drainage,
sewage, and water systems, beach access, recreational opportunities, and pedestrian walkways;
(F) In itself has no [significant adverse] substantial and detrimental effects but cumulatively has [considerable effect] substantial and detrimental effects upon the environment [or involves a commitment for larger actions];
(G) Substantially and detrimentally affects a rare, threatened, or endangered species of animal or plant, or its habitat;
(H) Is inconsistent with the [state] State plan, [county's] County general plan[,] including the Maui Island Plan and appropriate community plans, zoning, and subdivision ordinances;
(I) [Detrimentally] Substantially and detrimentally affects air or water quality [or ambient noise levels];
(J) [Affects] Substantially and detrimentally affects or is likely to suffer damage by being located in an environmentally sensitive area, such as flood plain, shoreline, coastal dune, tsunami zone, erosion-prone area, sea level rise exposure area, wetland, geologically hazardous land, estuary, fresh waters, or coastal waters;
(K) Substantially and detrimentally alters natural land forms and existing public views, or curtails or forecloses potential improvements to public views, to and along the shoreline; or
(L) Is inconsistent with the objectives and policies of chapter 205A, HRS.

(e) An application is automatically incomplete, at any stage of the application process, if it is for or relates to land use on a lot or on a unit in a condominium property regime that is the subject of an unresolved enforcement action by the department, pursuant to section 12-202-23, if the department has sent a notice of warning or notice of violation for the enforcement action. However, an
application is not automatically incomplete if the applicant pays all fines associated with the unresolved enforcement action as required by the director, and approval of the application would resolve the enforcement action. An enforcement action is unresolved until all fines as determined by the director have been paid.

Based upon the assessment and review of the application, and considering previous and other proposed actions on the same parcel or on related adjacent parcels within the preceding twelve months, the director shall make a determination and notify the applicant in writing within thirty calendar days after the application is complete that the proposed action either:

1. Is exempt from the requirements of this chapter because it is not a development pursuant to section 205A-22, HRS, as amended;
2. [Requires] Is a development and requires a special management area minor permit pursuant to section 205A-22, HRS, as amended, which shall be processed in accordance with section 12-202-14; or
3. [Requires] Is a development and requires a special management area use permit pursuant to section 205A-22, HRS, as amended, which shall be processed in accordance with sections 12-202-13 and 12-202-15;
4. Requires a special management area emergency permit pursuant to section 205A-22, HRS, as amended, which shall be processed in accordance with section 12-202-16; or
5. [Cannot be processed because] If the director determines that the proposed action is a development and requires a special management use or minor permit, and if the proposed action is not consistent with the [county] County general plan, including the Maui Island Plan and applicable community plan, [and] or zoning, [unless] the director shall notify the applicant that a general plan, community plan, or zoning [application for an appropriate] amendment is required and that an amendment application can be processed concurrently with the SMA permit application. [Eff 1/1/94; am 9/28/97; am and comp 9/25/03; am and comp]
§12-202-13 Notice of application and notice of public hearing; adequacy of notice. (a) Where a public hearing is required to be held pursuant to these rules, the applicant shall prepare a notice of application and legible map. The form of the notice shall be provided to the applicant by the department. Where these rules require a public hearing, the applicant shall prepare for the department’s review a notice of application with a legible location map using a form provided by the department. Prior to publication, the department shall review the notice of application for completeness. Within ten calendar days of departmental approval, the applicant shall submit the notice of application to a newspaper for publication. The applicant shall publish the notice of application once in a newspaper printed and issued at least twice weekly in the County and which is generally circulated throughout the County.

(b) A public hearing before the commission shall commence within one hundred twenty calendar days, or as soon thereafter, when required by these rules, the commission shall hold a public hearing after the director has determined the application is complete. ready for public hearing.

(c) Where a public hearing is required to be held pursuant to these rules, the applicant shall prepare for the department’s review a notice of public hearing with a legible location map using a form provided by the department. The department shall notify the applicant of the date of the public hearing at least forty-five days prior to the public hearing date. The department shall approve the applicant’s notice of public hearing before mailing. The applicant’s mailed notice of public hearing shall be approved by the department before mailing and shall include:

(1) The applicant’s name, mailing address, and the nature of the proposed development;
(2) The street address of the parcel that is the subject of
the application (if available); (3) The tax map key number(s) of the parcel;
(4) A location map; (5) The name of the applicant's agent and mailing address
(if applicable); (6) The date, time, and place of the public hearing; and
(7) A statement that additional information may be
obtained at the department's office, providing the
department's address and telephone number.]

(d) The applicant's mailed applicant shall mail the notice of
public hearing shall be mailed not less than thirty calendar days
before the hearing date by certified or registered mail or with delivery
confirmation, postage prepaid, to owners of record of real property
situated within five hundred feet of the boundaries of the parcel that
is the subject of the application. The applicant shall obtain the
addresses of the owners of record from the real property tax division,
department of finance, within thirty calendar days prior to the
mailing of the notice of public hearing. The applicant shall also send
notice to all persons who have requested the commission in writing
to be notified of the subject special management area proceedings.

(e) Not less than thirty calendar 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, and pursuant to section 1-28.5, HRS. 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.

(f) The director may authorize the consolidation of the
hearing with any other hearing required pursuant to law, or
pursuant to any rules adopted thereunder.

(g) The mailed notice of public hearing shall be deemed
adequate, and the failure of any owner to receive such notice shall
not invalidate any application, proceedings, assessment, or
determination by the commission if the applicant, by affidavit,
verifies that the names and addresses of owners of real property
situated within five hundred feet of the subject parcel were obtained
from the County of Maui real property tax roll, department of finance, and that current ownership was verified with the records of the County's real property tax division, within thirty days of the mailing of the notice of public hearing, stating both the date the addresses were obtained and the date notice was mailed, accompanied by receipts of certified or registered mail or evidence of delivery confirmation. If there are multiple owners of the property, notification of all persons listed by name on the records of the County of Maui real property tax roll division, department of finance, shall be deemed adequate notice as to all owners. [Eff 1/1/94; am 9/28/97; am 11/13/00] (Auth: HRS §§91-2, 205A-27) (Imp: HRS §§1-28.5, 205A-29)

§12-202-14 Special management area minor permit procedures. (a) If the director has determined that the proposed action is a development and requires a special management area minor permit, the assessment application submitted pursuant to section 12-202-12 may be deemed the minor permit application, provided that when development for which a minor permit is required is started before obtaining a permit, an additional fee of $100 shall be paid by the applicant. The payment of said fee shall not relieve any persons from fully complying with the requirements of these rules nor from any penalties prescribed in section 12-202-25.

(b) The director shall approve, approve with conditions, or deny such permit in accordance with the guidelines in section 205A-26, HRS, as amended. The director may ask the commission to approve standard conditions that shall thereafter apply to all minor permits, in addition to any project-specific conditions, to ensure that permitted activities comply with chapter 205A, HRS. Any final decision shall be transmitted to the applicant in writing and shall be appealable pursuant to section 12-202-26.

(c) The director shall notify the commission, at the commission’s next regularly scheduled meeting, of the issuance by the director of the director’s approval of special management area minor permits, receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the name of each applicant, the proposed development, authorized
§12-202-15 **Special management area use permit procedures.**

(a) Any person whose proposed development action is a development and requires a special management area use permit, or who has waived an assessment by the department, shall file an application with the department on a form provided by the department, which may be required to be filed electronically, and which shall require:

1. All information and documentation required pursuant to section 12-202-12c, excluding valuation of the development; and
2. The real property tax map key number of parcels and the names and addresses of owners of real property for real property situated within five hundred feet of the boundaries of the parcel on which the proposed development is to occur, obtain from the County of Maui real property tax division;
3. An administrative fee as established in the County budget.
4. Any other relevant information and documentation required by the director.

(b) Upon receipt of the application, the director shall review the application based on the policies, objectives, and guidelines as provided in sections 12-202-10 and 12-202-11 and, if necessary, request that the applicant provide any additional data or information as may be required for review of the proposed development. The application shall not be deemed complete transmitted for agency review until the director is satisfied that the application
has fulfilled all application requirements and has addressed the
policies, objectives, and guidelines.

(c) The director shall submit the application, with all
relevant information, to appropriate agencies for review and
comment. The director shall request such agencies [, boards, and
commissions] to review and comment on the proposed development
within thirty days from the date on which the application was
distributed for review[, and shall request such agencies to address
the maintenance, restoration, and enhancement of the special
management area consistent with the objectives, policies and
guidelines of chapter 205A, HRS, as amended.]

(d) The director shall [inform the applicant of any legal
requirement to] present the proposed development, if applicable, to
the urban design review board [, the cultural resources commission
and the NBCIDAC or the Hana advisory committee] for comment and
recommendations to the commission. [The urban design review
board and the cultural resources commission shall address the
maintenance, restoration and enhancement of the special
management area consistent with the objectives, policies, and
guidelines of chapter 205A, HRS, as amended.] The [commission
may designate the NBCIDAC or the] Hana advisory committee is
hereby designated by the commission to conduct the public hearing
for applications in the Hana Community Plan region.

(e) [Upon receipt of final agency comments, the application
shall be deemed complete by the director and shall be scheduled for
public hearing.] Upon receipt of agency comments and, if applicable,
adequate applicant responses, the director shall schedule the
application for public hearing.

(f) The commission shall approve a special management area
use permit, subject to terms and conditions as permitted in sections
205A-26(1) and 205A-26(3), HRS, as amended, and any standard
conditions approved by the commission if it finds the criteria set forth
in sections 205A-26(2) and 205A-26(3), HRS, as amended, have been
met. The commission shall deny a special management area use
permit if it finds these criteria have not been met.
(g) Findings of fact, conclusions of law, and decision and order shall be issued in accordance with the rules of practice and procedure for the commission in effect when action is taken.

(h) The director may ask the commission to approve standard conditions that shall thereafter apply to all permits, in addition to any project-specific conditions, to ensure that permitted activities comply with chapter 205A, HRS. [Eff 1/1/94; am 9/28/97, am and comp 12/28/02, am and comp 4/21/08] (Auth: HRS §§91-2, 91-4.2, 205A-26, 205A-27, 205A-29) (Imp: HRS §§205A-4, 205A-26, 205A-28, 205A-29)

§12-202-16 Special management area emergency permit procedures. (a) An owner or authorized representative may apply for a special management area emergency permit when the owner or representative has concluded that danger or substantial harm to property, any person, or the public health, safety, and welfare is imminent. The director will consider the application, including best management practices to protect the environment, and determine whether the project is a development and therefore requires a permit, and whether conditions justify issuance of a permit to begin work immediately. The purpose of an emergency permit is to allow an urgently needed protective measure, principally of a temporary nature. The temporary measure may also be allowed as a permanent measure only after the director has determined it is the best environmentally sound alternative. A temporary measure may be allowed for no more than one hundred eighty days while, if necessary, a permanent measure is formulated, permitted, and completed. The director may approve a time extension for a temporary measure when the director determines the permit holder is making adequate progress toward completing a permanent measure, but cannot reasonably do so within the time the emergency permit, or an extension thereof, allows.

(b) Any person seeking a special management area emergency permit shall file an application with the director[,] before commencing any emergency work. The application, provided by the department, shall require:
Identification of the applicant and documentation of ownership or tenancy and, if the applicant is not the owner, authorization by the owners of the parcel on which the proposed action is to occur; if the parcel has more than one owner and does not have a managing association authorized to submit the application, evidence of notification to all owners shall be provided.

The tax map key number and acreage or square footage of the parcel on which the proposed action is to occur;

A written description of the proposed action, including, but not limited to, the length, width, height, depth, and type of materials, for any proposed action size of structures in square feet and, if applicable, area, depth, or volume of grubbing, grading, or fill and any other ground-altering activity;

A written statement of the emergency or imminent danger or substantial harm to property, any person, or the public health, safety, or welfare; and why the proposed development would be immediately required to prevent danger or substantial physical harm to persons or property, or to allow the reconstruction of structures damaged by natural hazards to their original form;

The most current shoreline survey, if available and applicable;

Photographs or VHS format video tape identifying the emergency at the affected area and shoreline property boundaries where the emergency exists and where the action is to occur; video may also be provided;

Any other relevant information requested by the director; and

Electronic copies of all application documents; and

An administrative fee as established in the County budget.
[(b)](c) The director may waive the deferral of the filing of a written application if the applicant demonstrates to the satisfaction of the director that imminent danger or substantial harm to a habitable structure, any person, or the public health, safety, or welfare would result from the delay in filing a written application. After giving verbal approval to such a request, the director shall issue a written confirmation of the verbal approval, which shall contain:

1. The date and time the request was made;
2. The date the permit was issued;
3. Applicant’s and project names, address, email address, and telephone number;
4. Tax map key number (if available);
5. Statement of the imminent danger posed and the substantial harm that could occur to the habitable structure if the permit were not granted; and
6. The permitted temporary measures;
7. The requirement that not more than thirty calendar days after the approval of the request, the permit holder shall submit a written emergency permit application as provided in subsection (b), and that if the applicant fails to do so, the director may require that any temporary measure be removed; and
8. The statement that other permits may be required.

[(c)](d) No special management area emergency permit shall allow the reconstruction of structures if such structures were not lawfully constructed.

[(d)](e) Except as provided in subsection (e), after reviewing a written application, the director shall issue a written special management area emergency permit where the applicable provisions of this section have been met and:
(1) The director finds the criteria set forth in sections 205A-22 and 205A-30, HRS, as amended, have been met.

(2) In the event of impending or presently occurring disaster, the mayor has waived the requirements of sections 12-202-12, 12-202-14, or 12-202-15, but not this section; or

(3) In the event of a state-declared emergency, the governor, after conferral with and the recommendation of the mayor, has waived the requirements of sections 12-202-12, 12-202-14, or 12-202-15.

(e) No special management area emergency permit shall allow the reconstruction of structures damaged by natural hazards to their original form if such structures were previously found not to be in compliance with the federal flood insurance program or were not legally constructed.

(f) The director may place reasonable terms, conditions, and time stipulations upon such permit.

(g) The director shall set a date for the permit, not to exceed one hundred eighty days, and set a time limitation by which the applicant shall submit an application for a permit pursuant to sections 12-202-14 or 12-202-15, or by which the applicant must remove or terminate any temporary measures.

(h) For an emergency permit request that is the result of or that otherwise involves coastal erosion, the director shall consult with the State Department of Land and Natural Resources, Office of Conservation and Coastal Lands, or other relevant State agency, on whether to approve any temporary measure in order to benefit both the applicant and neighboring shoreline properties, to resolve the emergency situation expeditiously, and to minimize the environmental impact to the coastal zone. Any such approval, in addition to any project-specific conditions, shall include the following conditions:

(1) Within ninety days, the applicant shall provide the department a description of potential long-term alternatives designed to alleviate the emergency situation, which shall include:
(A) alternatives, including relocation of threatened structures or elevation of structures, and dune or beach restoration;
(B) assessment of other viable alternatives, which may include protective or erosion control measures, such as groins, and offshore structures such as breakwaters;
(C) a description of how each alternative complies with chapter 12-203 of the commission’s shoreline rules, if applicable;
(C) a draft timeline to plan, design and complete each long-term alternative; and
(D) a list of potential federal, State, and County permits required to achieve each long-term alternative.

(2) Within ninety days of the permit’s approval, the permit holder shall consult with the department about identified long-term alternatives to understand the requirements and restrictions for work permitted in the shoreline area, as defined in the commission’s shoreline rules, if applicable.

(3) The temporary measure must be removed unless the permit holder submits an application by the date specified by the emergency permit to allow the temporary measure to remain, pursuant to subsection (i).

(i) No less than thirty days prior to the expiration date of an emergency permit, the permit holder may apply for a time extension for any permit provision on a form provided by the department. Such application shall include, at a minimum:

(1) a description of the permit holder’s preferred alternative;
(2) evidence that the permit holder is making adequate progress toward completing permanent measures, but reasonably cannot do so within the time allowed by the emergency permit; and
(3) a plan and timeline for obtaining all required permits.

The director may approve a time extension for no more than one hundred eighty days at a time.

(j) If the director finds there is no imminent danger or substantial harm to a habitable structure, any person, or the public
health, safety, or welfare, or that the requirements of subsection (h) were not met, the director shall deny the emergency permit. If the director denies the emergency permit, the denial shall be in writing, setting forth facts sufficient to demonstrate the application did not meet the requirements for issuance of the emergency permit pursuant to subsection (h). The director shall notify the applicant it can submit an application for an assessment, a special management area use or minor permit in accordance with these rules, and shall inform the applicant of the right to appeal pursuant to section 12-202-26.

(k) The director shall provide notice of the director's approval of all emergency permits to the commission at the next regular meeting after the permit has been issued, receipt of which shall be acknowledged by the commission. [Such reports shall include all facts and reasons for the determination.]

(i) If the director denies the emergency permit, the denial shall be in writing, setting forth facts sufficient to demonstrate the application did not meet the requirements for issuance of the emergency permit pursuant to subsection (d). The applicant shall be informed of his right to appeal pursuant to section 12-202-26 herein.] [Eff 1/1/94; am 9/28/97] (Auth: HRS §§91-2, 205A-27, 205A-29) (Imp: HRS §§91-2, 91-14, 205A-30)

§12-202-17 Amendments to [and determinations of] permit [terms, conditions, and time stipulations] approvals. (a) Request. Any person who has been issued a special management area emergency permit, minor permit, or use permit may request the director or commission, as appropriate, to amend [delete, or determine] any conditions placed upon such permit approval.

(b) Form. Any person seeking to amend a permit approval shall file an application with the department in a form provided by the department, the content of which shall include:

(1) The term, condition, or time stipulation to be amended, deleted, or determined;
(2) If an extension of a time stipulation is requested, the
length of time extension desired. A description of the
requested amendment;
[(3)](2) The reasons and justification for the [requested
amendment, deletion, or determination] request;
[(4)] (3) An administrative fee as established in the County
budget; [and]
(4) If the request is for a permit transfer, the transferor’s
consent and a notarized affidavit from the transferee
acknowledging and agreeing to comply with the permit
approval;
(5) If the request is to amend a time stipulation, the length
of time requested, an analysis of whether any changes
have occurred within the special management area since
the granting of the permit that may cause the permit
holder’s development to have a substantial adverse
environmental or ecological effect or adversely affect the
capacity or condition of infrastructure; and
[(5)](6) Any other information and documentation requested by
the director.
[(c) Unless otherwise provided, any application for an
extension of a time stipulation must be filed not less than sixty
calendar days prior to the expiration date of the time condition,
provided that the director for good cause may waive such sixty day
requirement.
Unless waived by the applicant and the director, notice of the public hearing to amend or determine the permit shall be given pursuant to the procedures set forth in section 12-202-13. A public hearing shall not be waived if a petition to intervene was filed or any person, other than the applicant, was admitted as a party to any prior proceeding on the matter, unless a written waiver from all parties has been received by the department. In instances in which the proposed amendment or determination does not clearly pertain to or could not affect the same rights, privileges or interests on which the intervention was based, a written waiver from all parties shall not be required for purposes of waiving a public hearing.] If applicable, the director shall circulate the request to appropriate agencies for review and comment.

[(d) (c) Permit transfer. Unless otherwise specified in the permit conditions, the director may issue a written approval for a special management area use permit transfer, if the permit holder submits a written request for a permit transfer to include the following:

(1) Reason(s) for permit transfer;
(2) Transferor's consent; and
(3) Notarized affidavit from transferee acknowledging the conditions established with the subject permit and agreement by transferee to comply with these conditions.]

The director shall notify the commission, at the commission's next regularly scheduled meeting, of the issuance of any permit transfer, receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the aforementioned information provided to the department and the permit transfer approval letter. Nothing in this section shall prevent the director from forwarding any permit transfer request to the commission for [consideration] action in accordance with procedures set forth in this section.

[(e) (d) Time stipulation. Unless otherwise specified in the permit conditions, the director may approve a special management area use permit time extension of no more than five years to initiate construction or to complete construction, if the permit holder submits a written request for a time extension. The request shall include the following:]

([1) Reason(s) for permit time extension;
(2) Length of time extension requested;
(3) An analysis of whether any changes have occurred within the special management area since the granting of the permit that may cause the permit holder’s development to have a substantial adverse environmental or ecological effect; and
(4) An analysis of whether any changes have occurred within the special management area since the granting of the permit that may cause the permit holder’s development to adversely affect the capacity or condition of infrastructure.]
If the director determines that there have been no changes within the special management area since the granting of the permit that will cause the permit holder’s development to have any substantial adverse environmental or ecological effect, and that there have been no changes within the special management area since the granting of the permit that will cause the permit holder’s development to adversely affect the condition or capacity of infrastructure, the director may grant up to a two-year time extension.

If a petition to intervene was granted and any person other than the applicant was admitted as a party to any prior proceeding on the matter, the director shall notify such person at the person’s last known address at least ten days prior to taking action on the time-extension request to determine if such person has any objections or concerns that the director should consider in deciding whether to approve or disapprove the request or forward the request to the commission.

The director shall notify the commission at the commission’s next regularly scheduled meeting of the issuance of any time extension, receipt of which shall be acknowledged by the commission. Nothing in this section shall prevent the director from forwarding any time extension request to the commission for action in accordance with procedures set forth in this section.

Prior to granting or denying any permit time extension request, the director shall notify the commission of the request at the commission’s next regularly scheduled meeting, receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the information provided to the department by the permit holder. The commission may review the permit time extension request at its next available meeting after receiving notice or waive review of the request. If the commission waives review of the request, the director may grant or deny the time extension and forward a copy of the determination to the commission.

If the director finds there have been changes within the special management area since the granting of the permit that will cause the permit holder’s development to have any substantial adverse environmental or ecological effect, or adversely affect the condition or capacity of infrastructure, the request shall be scheduled for commission action.

A request for a time extension must be submitted prior to permit expiration. If a timely request is submitted but not approved prior to permit expiration, the permit shall remain in effect until the renewal is granted or denied, unless the applicant causes substantial delay in the review and approval process.

(e) Amendment or determination other than transfer or time extension. Unless otherwise specified in the permit approval, the director may approve or deny nonsubstantive amendments to the permit and may make determinations regarding permit approvals when such amendments or determinations are nonsubstantive. If the director determines that the requested amendment or determination is substantive, then the director shall forward the request to the
commission for action. The director shall determine whether a public hearing shall be held and, (f) After review and final comment by appropriate agencies, the application shall be deemed complete by the director, and the application shall be referred to the commission and,] if a public hearing is required, set a date for the hearing and provide notice as required by section 12-202-13. The commission shall conduct a hearing in accordance with the procedures set forth in its rules.

(f) Intervention. If a petition to intervene was granted and any person other than the applicant was admitted as a party to any prior proceeding on the matter, and the proposed amendment or determination clearly pertains to or could affect the same rights, privileges or interests on which the intervention was based, the applicant shall notify such person in writing, at the person’s last known address, of the requested amendment or determination, and ask if such person requests that a public hearing be held. The applicant shall provide the department with evidence of such notification, including proof of mailing, which shall be verified by the department and be to the satisfaction of the director. A public hearing on the requested amendment or determination shall be held if requested by any such person within thirty days of the date the applicant’s notice was mailed. Notice of public hearing shall be given pursuant to the procedures set forth in section 12-202-13. The commission shall conduct a hearing in accordance with the procedures set forth in its rules. This section shall not apply to requests for permit transfers or time extensions. Requests for permit transfers shall be processed pursuant to section 12-202-17(c) and requests for time extensions shall be processed pursuant to section 12-202-17(d).

(g) Commission action. Findings of fact, conclusions of law, and decision and order for any special management area use permit application seeking to amend[; delete,] or determine any permit [terms, conditions, and time stipulations] approval shall be issued in accordance with the rules of practice and procedure of the commission in effect when action is taken and the review guidelines as set forth in section 12-202-11. [Eff 1/1/94; am 9/28/97, am and comp 4/21/08] (Auth: HRS §§91-2, 205A-29, 205A-30) (Imp: HRS §§205A-26, 205A-29)
SUBCHAPTER 3

PROCEDURES TO ADOPT SPECIAL MANAGEMENT AREA RULES; DECLARATORY RULINGS; [AND] ADOPTION AND AMENDMENT OF BOUNDARIES AND MAPS; ENFORCEMENT; AND APPEALS

§12-202-21 Petition and procedures to adopt, amend, or repeal special management area rules; declaratory rulings. The commission may adopt, amend, or repeal any of its rules by following the procedures outlined in its rules of practice and procedure section 12-201-92. Any interested person may petition the commission for a declaratory order as to applicability of any statutory provision or, of any of these rules, or of any order of the department or the commission relating to the special management area pursuant to the commission’s rules of practice and procedure section 12-201-93. [Eff 1/1/94] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4, 91-6, 91-7)

§12-202-22 Adoption and amendment of special management area boundaries and maps. (a) Any amendment to the boundaries of any special management area map adopted and filed with the department as of November 19, 1975, or as amended pursuant to section 205A-23, HRS, as amended, and these rules, may be initiated by the director in accordance to the requirements of this section. The director may, at any time, initiate a review of and amendments to the boundaries of any special management area map in accordance with the requirements of this section.

(b) The director may at any time initiate comprehensive review and amendments to the special management area boundaries.

(c) The commission, by a two-thirds vote of its total membership, may direct the director to initiate a comprehensive review of and amendments to the special management area boundaries.

(d) The director shall give notice of the director’s intent to amend the special management area boundaries to the commission, the general public, and the office of planning, stating the initiation date and estimated completion date of the director’s review and shall submit submittal of the proposed amendments to the commission. Upon submittal of the proposed amendments to the commission, the director shall schedule the proposed amendments for public hearing.

Not less than thirty calendar days before 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, pursuant to section 1-28.5, HRS. The notice shall state the proposed amendment, the date, time, and place of the hearing, a map of the proposed boundary amendment, and all other matters required by law.
The notice published in the newspaper shall be deemed adequate, and the failure of any owner to receive such notice shall not invalidate any amendments, proceedings, assessment, or determination by the commission.

The commission may amend the special management area boundaries only upon the finding that the amendments will further the objectives and policies of chapter 205A, HRS, as amended, and will be consistent with the general plan and other applicable ordinances of the County of Maui. Upon review of the State of Hawaii office of planning, pursuant to section 205A-23, HRS, the commission shall render a final decision and issue a written order and, if applicable, direct the director to issue a written order and final map within sixty calendar days after the final vote of the commission, unless otherwise extended by vote of the commission. [Eff 1/1/94; am 9/28/97; am 11/13/00] (Auth: HRS §91-2) (Imp: HRS §§1-28.5, 205A-23)

§12-202-23 Enforcement. (a) The appropriate enforcement agency as designated by the County Charter director shall enforce these rules, except as otherwise provided herein.

(b) Any development use, activity, or operation pursuant to these rules and section 205A-22, HRS, as amended, that has not received a required emergency permit, minor permit, or use permit pursuant to this part or has failed to comply with conditions established with any such permit, is a violation of these rules and chapter 205A, HRS. The violation shall be corrected by immediate application for and subsequent granting of the appropriate permit or other means as determined by the director. 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. An exemption, emergency permit, minor permit, permit amendment, or use permit 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 state or county permit or approval shall be construed as special management area permit approval pursuant to this part.

(c) Where the shoreline is affected by a manmade constructed structure is situated within the special management area, and the structure has not been authorized with government agency permits required by law, if any part of the structure is on private property, then for purposes of enforcement of this part, the entire structure shall be construed to be entirely within the special management area and shall be [removed or the violation shall be corrected.] subject to enforcement accordingly.

(d) Issuance of notice of violation and order.
The [landowner] owner shall, and [or] the alleged violator may, [or both, shall] be notified by the enforcement agency [by certified or registered mail] of an alleged violation of [this rule, these rules and any approval, permit, or permit condition issued pursuant thereto, or any condition of a special management area permit approval.] The director shall provide service by at least one of the following methods, in order of preference, as the director deems appropriate: certified or registered 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 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.

The notice of violation and order shall include, but not be limited to, the specific section of [this rule which] 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. The notice of violation and order may also require that the violative activity cease, or that the violative development be removed; that an initial civil fine be paid not to exceed $100,000 per violation; [and] 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 12-202-26 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 or potential 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.

The notice of violation and order shall state that the order shall become final thirty days after the date of its mailing unless written request for a hearing is mailed or delivered to the enforcement
agency within said thirty days. Nothing in this section shall prevent
the landowner or violator from seeking to negotiate a settlement or
resolve a dispute.

(3) If the violator seeks a negotiated settlement with the enforcement
agency, but waives the right to a hearing, the enforcement agency,
in consultation with the department and the corporation counsel,
may negotiate a settlement agreement with the landowner or, if
appropriate, the violator, that provides for cure of the violation, set
any fine, and inspection of parcel by the enforcement agency and
the department. The proposed settlement shall be forwarded to the
commission for final action.

(4) Any request for a hearing shall be in writing and delivered, or mailed
and postmark dated, to the department within thirty days, as stated
on the notice. Upon receipt of a request for a hearing, the
department shall specify a time and place for the person subject to
the order to appear and be heard. The hearing shall be conducted
by the director or the director's designee in accordance with the
provisions of chapter 91, HRS, as amended.

(5) 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.

§12-202-24 Conflicts with other laws. In case of a conflict between the
requirements of any other [state] State law or [county] County ordinance
regarding the special management area, the more restrictive requirements shall
apply in furthering the purposes of this part. Nothing contained in this part
shall be construed to diminish the jurisdiction of the [state] State department of
transportation over wharves, airports, docks, piers, or other commercial harbors,
and any other maritime facilities constructed by the [state] State; provided that
such plans are submitted for the review and information of the officer of the
respective agency charged with the administration of the [county] County zoning
laws, and found not to conflict with any [county] County ordinances, zoning laws,
(Imp: HRS §43.6)

§12-202-25 Penalties. Any person who violates any provision of these
rules shall be liable for an initial civil fine not to exceed $100,000 per violation
and maximum daily fine of $10,000 in addition to any other penalties until the
violation is remedied. A civil fine may be imposed by the department after an opportunity for an appeal hearing under chapter 91, HRS, as amended, and subsection 12-202-26(b) herein. [unless said hearing is otherwise waived.] A special management area permit application submitted subsequent to an applicant’s having completed the development or having been cited for the activity or construction without having obtained special management area approval, shall not stay any order to pay civil fines, including initial and accumulating daily fines. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-32) (Imp: HRS §§205A-22, 205A-26, 205A-28, 205A-29, 205A-30, 205A-33)

§12-202-26 Appeal of director's decision; filing the notice of appeal; settlement of appeal. (a) For decisions other than enforcement proceedings pursuant to section 12-202-23, appeal of the director's decision 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. For enforcement proceedings pursuant to section 12-202-23, appeal of a notice of violation may be made to the commission by the filing of a notice of appeal with the department within thirty days of the date of service. 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.

(b) An owner or violator who receives a notice of violation and order who believes that any part of the notice of violation and order, including fines, was issued in error, may submit a written request for the director to negotiate a final resolution of issues, including any corrective action that must be taken by the owner or violator, any permits that are required, any fines that must be paid, and any actions that are required by the department. The request shall be submitted within ten days of the date of service of the notice and may be submitted in addition to or instead of an appeal pursuant to subsection (a).

(c) If the director and the owner or violator agree on a resolution that involves a waiver of fines totaling less than $50,000, then the director will notify the owner or violator in writing and establish which party shall draft the agreement. At the commission’s next regularly scheduled meeting, the director shall notify the commission of the agreement, receipt of which shall be acknowledged by the commission.

(d) If the director and the owner or violator agree on a resolution that involves a waiver of fines totaling $50,000 or greater, then the director will notify the owner or violator in writing and establish which party shall draft the agreement. The agreement shall be submitted to the commission for final action. The commission may accept, accept with modifications, or reject the agreement.
(e) If the director and the owner or violator do not agree on a resolution, the director will notify the owner or violator in writing of the director’s termination of the negotiation. Submittal of any request for a negotiated resolution shall not affect the accrual of daily fines or any time limitations for appealing the notice of violation and order to the commission. [Eff 1/1/94; am and comp 9/28/97; am and comp 11/4/02] (Auth: Charter §§ 8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)


§12-202-28 Joint or consolidated appeals. If two or more parties are entitled to appeal [from] a decision of the director to the commission and their interests are such as to make joinder practicable, they may file a joint appeal and thereafter proceed on appeal as a single appellant. Appeals that are filed separately 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 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

§12-202-29 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], and the department shall notify the commission of the filing of the appeal at the next regular meeting. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)


§12-202-31 Contested case hearing on appeal. The commission shall hold a contested case hearing on the appeal. The director, the appellant, the owner, and, where the appellant is someone other than the applicant, the applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of the rules of practice and procedure for the Maui planning commission, relating to
petitions to intervene, contested case procedures, and 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 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

§12-202-32 Disposition of appeal. The commission may affirm the decision of the director, or may remand the case to the hearing officer, if any, with instructions for further proceedings; or it may reverse modify the decision of the director if the substantial rights of the appellant 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
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...
accordance with the Hawaii coastal zone management law, HRS chapter 205A.

(b) 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 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 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. Shoreline hardening has historically been the response to impacts from coastal hazards, and this approach is now widely recognized in most cases to have an adverse impact on neighboring properties and the environment. To prioritize
coastal resilience, and to preserve and restore environmental and cultural
resources, preferred alternatives include options for nature-based
protection, and to avoid, accommodate, or retreat from coastal hazards.
[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
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
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.

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

"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 lands 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.

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

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

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

"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.

"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, triangular 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 or most landward setback, not to exceed thirty-five 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 structure that costs less than $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:
   - landscape features including the following:
     - landscape features including the following:
   - movable or portable lifeguard stands;
   - landscaping and drywells in conjunction with irrigation systems;
   - irrigation systems, provided they are directed away from the
shoreline;

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

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

“Nonconforming structure/activity, lawful” means a structure or activity which 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.

“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 that identifies the existing condition of the subject parcel of land.

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

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

(1) Will not adversely affect beach processes;

(2) Will not artificially fix the shoreline;

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

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

(5) Will be consistent with:

(A) [Section 12-203-2(5) that states that the quality of scenic and open space resources should be protected, preserved and, where desirable, restored.] 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, upgrade or improvement 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.

"Reconstruction" means the rebuilding of an entire structure.

"Repair" means the fixing, replacing 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 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 structures 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, to include seawalls, revetments, riprap and bulkheads. Shoreline hardening does not include beach stabilizing structures, such as groins and breakwaters, designed by a professional engineer to stabilize a sandy beach along an eroding shoreline.

"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)

§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
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§§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5,
205A-43.6, 205A-45, 205A-49)
§12-203-6 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
equal to twenty-five percent of the average lot depth, but not more than one hundred fifty feet;

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

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

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

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

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

§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
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. [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


§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 to control or minimize pesticide and sediment runoff 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 as determined by the director. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements pursuant to Title 19, Maui County Code or increased storage needs;

(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 and natural and cultural resources;

(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, limited to a cumulative valuation of less than $500,000 in any 12-month period for a single ownership on a single lot or set of lots composing a unified building site. Increases in the density or intensity of use can be demonstrated by increased off-street parking requirements pursuant to Title 19, Maui County Code, increased storage needs, or other effects 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, limited to a cumulative valuation of less than $500,000 in any 12-month period for a single ownership on a single lot or set of lots composing a unified building site;

(g) Operation and maintenance activities for existing 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 including beach sand accumulations that block publicly-owned drainage ways, provided that beach sand is placed on adjacent beaches or dunes, and the obstruction consists solely of beach sand that is removed to the minimum volume and depth necessary to allow for passage of flood waters.

(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 is removed to the minimum volume and depth necessary to allow for passage of flood waters and 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.


§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.]
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 coastal hazards.

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.

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

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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.

(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...
and encumber the property with a unilateral agreement
to not seek protection with shoreline hardening;

(G) Lawfully constructed shoreline hardening structures
that are deemed by the director to be critical to
protecting a habitable structure or public infrastructure
may be repaired or maintained up to 50 percent of its
replacement value; otherwise, the structure shall not be
repaired and shall be demolished and removed. The
applicant shall provide a professionally certified
construction estimate to demonstrate the replacement
value of the structure, along with its size and
dimensions, and documentation or evidence of the
structure being lawfully nonconforming. The repairs or
maintenance shall not substantially exceed the size,
height or density of the original structure as determined
by the director.

(7) Qualified demolition.

(8) 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 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
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 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
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.

(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 shoreline hardening structures or activities shall be prohibited throughout the life of the structure or activity.

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

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

§12-203-13 Request for [a determination of] 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)
§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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(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis of historical and anticipated coastal erosion 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 abuts that abuts or are 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 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 water sports recreational facilities, which result in little or no interference with natural shoreline processes.]


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

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.

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)
§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
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 may be at risk. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-
§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-
§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))


§12-203-23 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,
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]
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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