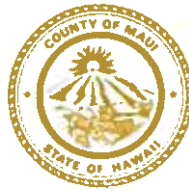


MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
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Deputy Director




DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

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.

Lawrence Carnicelli, Chair
And Members of the Maui Planning Commission
January 26, 2021
Page 3

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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TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 02

MAUI PLANNING COMMISSION

CHAPTER 202

SPECIAL MANAGEMENT AREA RULES

Subchapter 1 General Provisions

- §12-202-1 Title
- §12-202-2 Purpose
- §12-202-3 Scope [and exemptions]
- §12-202-4 Definitions
- §12-202-5 Severability
- §12-202-6 Special management area boundaries and maps
- §12-202-7 Implementation of rules
- §12-202-8 (Reserved)
- §12-202-9 (Reserved)]

Subchapter 2 Special Management Area Permit Procedures

- §12-202-10 Special management area objectives and policies
- §12-202-11 Special management area review guidelines
- §12-202-11.5 Special management area categorical exemptions
- §12-202-12 Assessment and determination procedures
- §12-202-13 Notice of application and notice of public hearing; adequacy of notice
- §12-202-14 Special management area minor permit procedures
- §12-202-15 Special management area use permit procedures

1	§12-202-16	Special management area emergency permit
2		procedures
3	§12-202-17	Amendments to [and determinations of] permit
4		[terms, conditions, and time stipulations]
5		approvals.
6	§12-202-18	(Reserved)
7	§12-202-19	(Reserved)
8	§12-202-20	(Reserved)]
9		
10		
11	Subchapter 3	Procedures to Adopt Special Management
12		Area Rules; Declaratory Rulings; [and]
13		Adoption and Amendment of Boundaries
14		and Maps; <u>Enforcement; and Appeals</u>
15		
16	§12-202-21	Petition and procedures to adopt, amend, or
17		repeal special management area rules;
18		declaratory rulings
19	§12-202-22	Adoption and amendment of special management
20		area boundaries and maps
21	§12-202-23	Enforcement
22	§12-202-24	Conflicts with other laws
23	§12-202-25	Penalties
24	§12-202-26	Appeal of director's decision; filing the notice of
25		appeal; <u>settlement of appeal</u>
26	§12-202-27	Content of the [notice of] appeal
27	§12-202-28	Joint or consolidated appeals
28	§12-202-29	Service of the notice of appeal
29	§12-202-30	Payment of fees
30	§12-202-31	Contested case hearing on appeal
31	§12-202-32	Disposition of appeal
32		

1 time the application was deemed complete. [Eff 1/1/94] (Auth:
2 HRS §§46-4, 91-2, 205A-27, 205A-29) (Imp: HRS §205A-23)

3
4 **§12-202-4 Definitions.** For the purposes of this chapter,
5 and unless it is plainly evident from the context that a different
6 meaning is intended, the definitions of this chapter shall be those
7 set forth in sections 205A-1, 205A-22, and 205A-41, HRS ([a copy]
8 copies of which shall be provided pursuant to section 12-202-7), and
9 as follows:

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

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

20 "Commission" means the Maui planning commission.

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

24 "Cultural resources commission" means the Maui County
25 cultural resources commission established under chapters 2.40 and
26 2.88 of the Maui County Code.

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

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

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

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

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

40 "Environmental assessment" or "environmental impact
41 statement" [or "EIS"] means an informational document that is

1 prepared in compliance with chapter 343, HRS, and the rules of the
2 office of environmental quality control.

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

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

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

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

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

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

27 "Hana advisory committee" means the Hana advisory
28 committee to the Maui planning commission pursuant to chapter
29 2.28 of the Maui County Code.

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

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

40 "Nonsubstantive amendment" means a proposed change to a
41 permit scope that has no impact to the special management area or

1 to the condition or capacity of infrastructure that is discernibly
2 different than that associated with the original approval.

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

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

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

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

21 "Reconstruction" means rebuilding of an entire structure.

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

25 "Sand" means particles of mineralogic or rock material
26 ranging in diameter from 0.0625 millimeters to millimeters that
27 shall be substantially clean of rubble and debris; shall contain no
28 more than fifteen percent volume of silt, the particles of which range
29 in diameter from 0.039 millimeters to 0.0625 millimeters, and clay,
30 the particles of which range in diameter from 0.00006 millimeters to
31 .0039 millimeters; and shall not consist of artificially crushed coral
32 as defined by chapter 20.08, Maui County Code.

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

38 "Shoreline survey" means the actual field location of the
39 shoreline prepared by a land surveyor registered in the State of
40 Hawaii. Such survey maps developed by the registered land
41 surveyor shall bear the surveyor's signature and date of field survey

1 and the certifying signature and date of the chairman of the board
2 of land and natural resources.]

3 "Single-family residence" means [a] one single-family dwelling
4 and [any accessory dwelling] all accessory structures thereto,
5 including one accessory dwelling as defined in and provided by title
6 19 of the Maui County Code, as amended[.], that together can be
7 considered an exempt action pursuant to section 205A-22, HRS.

8 "Urban design review board" means the Maui County
9 urban design review board as established under chapters 2.26 and
10 2.40 of the Maui County Code, as amended.

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

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

16 "Vegetation line" means a line marking the seaward limit of
17 vegetation growth.] [Eff 1/1/94; am 9/28/97, am and comp
18 9/25/03, am and comp 4/21/08] (Auth: HRS §§91-2, 205A-29)
19 (Imp: HRS §205A-29)

20
21 **§12-202-5 Severability.** If any provision of these rules or
22 the application thereof to any person is held invalid, the invalidity
23 shall not affect other provisions or applications of these rules [which]
24 that can be given effect without the invalid provision or application.
25 To that extent the provisions of these rules are severable. [Eff
26 1/1/94] (Auth: HRS §§91-2, 205A-29) (Imp: HRS §§91-2, 205A-9)

27
28 **§12-202-6 Special management area boundaries and**
29 **maps.** The special management area shall be all lands so
30 designated on the maps adopted by the commission as of November
31 19, 1975, or as amended pursuant to section 205A-23, HRS, which
32 maps are in the keeping of the department. These maps shall be the
33 official special management area to be administered and enforced
34 under these rules. [Eff 1/1/94] (Auth: HRS §§91-2, 205A-23,
35 205A-27, 205A-29) (Imp: HRS §205A-23)

36
37 **§12-202-7 Implementation of rules.** The director shall
38 provide such applications in a form as may be necessary to
39 accomplish the intent of these rules, and shall provide upon request,
40 a copy of sections of Hawaii Revised Statutes referenced in these
41 rules. Such copies shall be provided as a convenience to the public

1 listed below is not considered "development" pursuant to section
2 205A-22, HRS; by its minimal nature, does not have a cumulative
3 impact or a significant environmental or ecological effect on the
4 special management area; and therefore is exempt from any
5 requirements for a special management area assessment or permit.
6 However, such uses, activities, or operations may be subject to other
7 assessment or permitting requirements, such as a building permit,
8 a historic district permit, or a flood development permit, and may
9 require a shoreline setback approval if the action is located within
10 the shoreline area.

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

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

16 (b) Normal and customary agricultural activities on land
17 currently or historically used for such activities, provided that
18 appropriate best management practices to control or minimize
19 pesticide and sediment runoff are implemented to minimize impacts
20 to nearshore waters;

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

28 (d) On private property, one temporary event and its signage,
29 such as a fundraiser, community event, festival, fair, luau, and
30 family celebration, occurring not more than once in a thirty-day
31 period, and limited to ninety-six hours including setup and
32 takedown, and involving no new ground altering activity; on public
33 property, such temporary events and signage under a county or
34 state permitting authority; provided that if any event is on the
35 shoreline, then shoreline setback approval is required;

36 (e) Archaeological, geophysical, percolation, engineering, soils,
37 and other scientific testing conducted by a licensed archaeological

1 or scientific professional involving temporary excavation limited to
2 the minimum extent determined necessary and appropriate or as
3 approved by the State Historic Preservation Division, and employing
4 best management practices protective of the environment and
5 natural and cultural resources;

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

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

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

26 (i) Exterior installation on and maintenance, repairs, and
27 renovations to existing, lawfully established structures that involve
28 no ground disturbance and that are nonstructural, such as signage,
29 wireless antennae and other transmission equipment, satellite
30 dishes, and roof mounted equipment, such as photovoltaic and solar
31 panels;

32 (j) Nonstructural single-story enclosures of existing, lawfully
33 established roofed residential lanais, decks, patios, balconies,
34 carports or similar structures that are accessory to single-family
35 dwelling and multi-family dwellings and that are included in the
36 definition of "floor area" in Title 19 of the Maui County Code,
37 provided that those enclosures will not result in the total floor area

1 of a single family residence exceeding 7,500 square feet, limited to a
2 cumulative valuation of less than \$500,000 in any 12-month period
3 for a single ownership on a single lot or set of lots composing a
4 unified building site;

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

11 (l) Site improvements, except in coastal dunes, involving
12 limited ground disturbance more than six inches deep and up to
13 sixteen square feet no more than once in a 12-month period for holes
14 or trenching, such as the installation, removal, or maintenance of
15 trees and shrubs, utility pedestals, ground signs, water, sewer, and
16 conduit lines, walls and fences up to four feet in height, telephone
17 and light poles, mailbox posts, and solar panels, provided that the
18 improvements may be subject to shoreline setback approval
19 pursuant to the Shoreline Rules, and provided that this does not
20 include new wireless telecommunications towers, windmills and
21 wind turbines.

22 (m) Operation and maintenance activities for existing public
23 roadways and drainage systems, subject to approval by the
24 applicable state or county agency, such as vegetation management
25 activities, including tree trimming and cutting and vegetation
26 removal, and clearing obstructions including beach sand
27 accumulations that block publicly-owned drainage ways, provided
28 that beach sand is placed on adjacent beaches or dunes, and the
29 obstruction consists solely of beach sand that is removed to the
30 minimum volume and depth necessary to allow for passage of flood
31 waters.

32 (n) With the application of best management practices to
33 protect the marine and land environment, emergency protection of
34 Department of Environmental Management wastewater
35 infrastructure or Department of Water Supply infrastructure at
36 imminent risk of failure which would substantially affect public

1 health or safety, including significant water loss, or contamination
2 of surface water, land, or water supply.

3
4 **§12-202-12 Assessment and determination procedures.**

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

14 (b) The applicant or the director may waive assessment and
15 determination, and the applicant may apply for a special
16 management area use permit pursuant to the provisions of sections
17 12-202-13 and 12-202-15.

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

21 [(1) Any applicant for a proposed action which has been
22 assessed under the National Environmental Policy Act
23 (42 U.S.C. §4321, et. seq.) or under chapter 343, HRS,
24 and for which a findings of no significant impact
25 (FONSI) has been filed or a required EIS has been
26 accepted, may apply directly for a special management
27 area use permit or special management area minor
28 permit.

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

33 (A)

34 (1) Identification of the applicant [along with] and
35 documentation of ownership or tenancy and, if the
36 applicant is not the owner, authorization by the
37 [owners] owner of the parcel on which the proposed

- 1 action is to occur; if the subject parcel has more than
2 one owner and does not have a managing association
3 authorized to submit the application, evidence of
4 notification to all owners shall also be provided;
- 5 **[(B)]**
- 6 (2) Tax map key number and acreage or square footage of
7 the parcel on which the proposed action is to occur;
- 8 (3) A location map;
- 9 **[(C)]**
- 10 (4) A plot plan, drawn to scale, of the parcel upon which
11 the proposed action is to occur [, and photographs or
12 VHS format video tape identifying the area where the
13 proposed action is to occur]; the plot plan shall identify
14 any special flood hazard area, 3.2-foot sea level rise
15 exposure area, and the erosion hazard line within the
16 parcel, if applicable;
- 17 (5) If the proposed action involves new structures, the
18 applicant shall provide dimensioned floor plans,
19 sections, and elevations;
- 20 (6) Photographs identifying the area where the action is to
21 occur; video may also be provided;
- 22 **[(D)]** A shoreline survey if the land abuts the shoreline;
23 provided, if the proposed action will occur outside of the
24 shoreline setback area, the director may waive a survey
25 if:
- 26 (i) the shoreline is fixed by a manmade structure or
27 structures which have been approved by
28 appropriate government agencies and for which
29 engineering drawings exist to locate the interface
30 between the shoreline and the structure;
- 31 (ii) the shoreline is fixed by natural stabilized
32 geographic features such as cliffs and rock
33 formations; or
- 34 (iii) the parcel is not abutting the shoreline.
- 35 **[(E)]**
- 36 (7) A written description of the proposed action, including
37 [but not limited to] the use, length, width, height,

1 [depth,] building materials, [and statement of
2 objectives;] size of structures in square feet and, if
3 applicable, area, depth, or volume of grubbing, grading,
4 fill, and any other ground-altering activity such as
5 utility installation;

6 [(F)]

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

10 [(i)]

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

13 [(ii)]

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

18 [(iii)]

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

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

24 (v) Alternatives to the proposed action;

25 (vi)]

26 (D) [Mitigating measures] Measures proposed to
27 minimize [impact] potential impacts, including
28 best management practices.]; and

29 (vii) Any irreversible or irretrievable commitment of
30 resources.

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

36 (H)]

- 1 (9) A written estimated valuation of the proposed action;
2 the director may require an estimated valuation [as
3 estimated] by an architect, engineer, or contractor
4 licensed by the department of commerce and consumer
5 affairs, State of Hawaii, or [written valuation of the
6 proposed action as estimated by] the administrator of
7 the development services administration, department of
8 public works, County of Maui;
9 [(I) The state land use district boundary designation,
10 community plan designation, county zoning designation, and
11 any other special designation, if applicable.]
12 (10) A zoning and flood confirmation form, completed and
13 signed by the department unless the Department ceases
14 the use of such form;
15 [(J)]
16 (11) [An] A draft environmental assessment [and findings of
17 no significant impact or an] or a draft environmental
18 impact statement, if the proposed action is subject to
19 chapter 343, HRS, and the department or commission
20 is the accepting agency; [if required, pursuant] or the
21 agency decision letter and any final environmental
22 document, if the proposed action is subject to chapter
23 343, HRS, and a government agency has determined
24 that the action is exempt, issued a finding of no
25 significant impact, or accepted a final environmental
26 impact statement;
27 [(K)]
28 (12) Any oral or written comments received by the applicant
29 from governmental or [non-governmental]
30 nongovernmental agencies, community organizations,
31 applicable design review committees, or individuals
32 with regard to the proposed action, and a summary of
33 the dates and attendance of public meetings held on the
34 proposed action;
35 [(L)]
36 (13) Any other information and documentation required by
37 the department to properly process the application; and

- 1 ~~[(M)]~~
2 ~~(14)~~ An administrative fee as established in the [county]
3 County budget.
4 (d) The assessment application shall be reviewed as
5 follows:
6 (1) Upon submission of [a completed] an application that
7 contains all required information, the director may
8 submit the application to appropriate agencies for
9 review and comment. The director shall request such
10 agencies to provide their comments on the application
11 within thirty days from the date on which the
12 application was distributed for review, or as otherwise
13 specified by the director. The director shall determine
14 that the application is complete when adequate agency
15 comments and, if applicable, applicant responses have
16 been received. Upon a determination that an
17 application is complete, the director shall review the
18 proposed action and make a written evaluation as to:
19 (A) The valuation of the proposed action. The
20 director may request that the applicant's
21 estimates of the total cost or fair market value
22 [may] be verified by the director of public works
23 [and environmental management]. The director
24 of public works [and environmental management]
25 shall use the most recent building valuation data
26 provided by the International Conference of
27 Building Officials. In the event of a conflict
28 between the estimates of the applicant and the
29 director of public works, [and environmental
30 management,] the higher estimate amount shall
31 be used by the director for the purposes of an
32 assessment of the proposed action; [and]
33 (B) Whether the proposed action is [or is not] a
34 development or is an exempt action or, upon
35 further consideration, the proposed action did not
36 require a special management area assessment

- 1 and is a categorical exemption pursuant to
2 section 12-202-11.5; and
- 3 (C) The potential adverse environmental and
4 ecological effects based upon the following
5 significance criteria [set forth in subsection (e).];
- 6 [(e) In considering the significance of potential
7 environmental and ecological effects, the director shall evaluate:
- 8 (1)]
- 9 (i) The sum of those effects that adversely affect the
10 quality of the environment and the ecology, and
11 [shall evaluate] the overall and cumulative
12 adverse effects of the proposed action[.];
- 13 [(2)]
- 14 (ii) Every phase of a proposed action, its expected
15 primary and secondary consequences, and its
16 cumulative and [short] short-term or long-term
17 effects, including previous and other proposed or
18 completed actions on the same parcel or on
19 related adjacent parcels within the preceding
20 twelve months. A proposed action may have a
21 significant adverse effect on the environment
22 when the proposed action potentially:
- 23 (A) Involves an irrevocable [commitment to loss or
24 destruction of] or substantial and detrimental
25 effect on any natural or cultural resources;
- 26 (B) Significantly curtails the range of beneficial
27 uses of the environment;
- 28 (C) Conflicts with the [county's] County's or the
29 [state's] State's long-term environmental policies
30 or goals;
- 31 (D) Substantially and detrimentally affects the
32 economic or social welfare [and activities] of the
33 community, [county,] County, or [state] State;
- 34 (E) Involves substantial [secondary impacts,
35 such as population changes and increased effects
36 on] and detrimental effects on public facilities,
37 [streets,] such as increased demand on drainage,

1 sewage, and water systems, beach access,
2 recreational opportunities, and pedestrian
3 walkways;

4 (F) In itself has no [significant adverse]
5 substantial and detrimental effects but
6 cumulatively has [considerable effect] substantial
7 and detrimental effects upon the environment [or
8 involves a commitment for larger actions];

9 (G) Substantially and detrimentally affects a
10 rare, threatened, or endangered species of animal
11 or plant, or its habitat;

12 (H) Is inconsistent with the [state] State plan,
13 [county's] County general plan[,] including the
14 Maui Island Plan and appropriate community
15 plans, zoning, and subdivision ordinances;

16 (I) [Detrimentially] Substantially and
17 detrimentally affects air or water quality [or
18 ambient noise levels];

19 (J) [Affects] Substantially and detrimentally
20 affects or is likely to suffer damage by being
21 located in an environmentally sensitive area,
22 such as flood plain, shoreline, coastal dune,
23 tsunami zone, erosion-prone area, sea level rise
24 exposure area, wetland, geologically hazardous
25 land, estuary, fresh waters, or coastal waters;

26 (K) Substantially and detrimentally alters
27 natural land forms and existing public views, or
28 curtails or forecloses potential improvements to
29 public views, to and along the shoreline; or

30 (L) Is inconsistent with the objectives and
31 policies of chapter 205A, HRS.

32 (e) An application is automatically incomplete, at any stage
33 of the application process, if it is for or relates to land use on a lot
34 or on a unit in a condominium property regime that is the subject
35 of an unresolved enforcement action by the department, pursuant
36 to section 12-202-23, if the department has sent a notice of warning
37 or notice of violation for the enforcement action. However, an

1 application is not automatically incomplete if the applicant pays all
 2 finances associated with the unresolved enforcement action as required
 3 by the director, and approval of the application would resolve the
 4 enforcement action. An enforcement action is unresolved until all
 5 finances as determined by the director have been paid.

6 ~~[e](f)~~ Based upon the assessment and review of the
 7 application, and considering previous and other proposed actions
 8 on the same parcel or on related adjacent parcels within the
 9 preceding twelve months, the director shall make a determination
 10 and notify the applicant in writing within thirty calendar days after
 11 the application is complete that the proposed action either:

12 (1) Is exempt from the requirements of this chapter
 13 because it is not a development pursuant to section
 14 205A-22, HRS, as amended;

15 (2) ~~[Requires]~~ Is a development and requires a special
 16 management area minor permit pursuant to section
 17 205A-22, HRS, as amended, which shall be processed
 18 in accordance with section 12-202-14; or

19 (3) ~~[Requires]~~ Is a development and requires a special
 20 management area use permit pursuant to section 205A-
 21 22, HRS, as amended, which shall be processed in
 22 accordance with sections 12-202-13 and 12-202-15[;].

23 ~~[(4)~~ Requires a special management area emergency permit
 24 pursuant to section 205A-22, HRS, as amended, which
 25 shall be processed in accordance with section 12-202-
 26 16; or

27 (5)(g)]

28 ~~(f)[Cannot be processed because]~~If the director determines
 29 that the proposed action is a development and requires a special
 30 management use or minor permit, and if the proposed action is not
 31 consistent with the [county] County general plan, including the
 32 Maui Island Plan and applicable community plan, [and] or zoning,
 33 [unless] the director shall notify the applicant that a general plan,
 34 community plan, or zoning [application for an appropriate]
 35 amendment is required and that an amendment application can be
 36 processed concurrently with the SMA permit application. [Eff
 37 1/1/94; am 9/28/97; am and comp 9/25/03; am and comp

1 10/10/03; am and comp 12/20/04) (Auth: HRS §§91-2, 205A-27,
 2 205A-29) (Imp: HRS §§205A-2, 205A-4, 205A-29, 205A-30.)

3
 4 **§12-202-13 Notice of application and notice of public**
 5 **hearing; adequacy of notice.** (a) [Where a public hearing is
 6 required to be held pursuant to these rules, the applicant shall
 7 prepare a notice of application and legible map. The form of the
 8 notice shall be provided to the applicant by the department.] Where
 9 these rules require a public hearing, the applicant shall prepare for
 10 the department's review a notice of application with a legible location
 11 map using a form provided by the department. Prior to publication,
 12 the department shall review the notice of application for
 13 completeness. [The] Within ten calendar days of departmental
 14 approval, the applicant shall submit the notice of application to a
 15 newspaper for publication [to a newspaper within ten days of
 16 departmental approval]. The applicant shall publish the notice of
 17 application once in a newspaper printed and issued at least twice
 18 weekly in the County and which is generally circulated throughout
 19 the County.

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

25 (c) [Where a public hearing is required to be held pursuant
 26 to these rules, the] When these rules require a public hearing, the
 27 applicant shall prepare for the department's review a notice of public
 28 hearing with a legible location map using a form provided by the
 29 department. The department shall notify the applicant of the date
 30 of the public hearing at least forty-five days prior to the public
 31 hearing date. The department shall approve the applicant's notice of
 32 public hearing before mailing. [The applicant's mailed notice of
 33 public hearing shall be approved by the department before mailing
 34 and shall include:

- 35 (1) The applicant's name, mailing address, and the nature
 36 of the proposed development;

- 1 (2) The street address of the parcel that is the subject of
2 the application (if available);
3 (3) The tax map key number(s) of the parcel;
4 (4) A location map;
5 (5) The name of the applicant's agent and mailing address
6 (if applicable);
7 (6) The date, time, and place of the public hearing; and
8 (7) A statement that additional information may be
9 obtained at the department's office, providing the
10 department's address and telephone number.]
11 (d) The [applicant's mailed] applicant shall mail the notice of
12 public hearing [shall be mailed] not less than thirty calendar days
13 before the hearing date by certified or registered mail or with delivery
14 confirmation, postage prepaid, to owners of record of real property
15 situated within five hundred feet of the boundaries of the parcel that
16 is the subject of the application. The applicant shall obtain the
17 addresses of the owners of record from the real property tax division,
18 department of finance, within thirty calendar days prior to the
19 mailing of the notice of public hearing. The applicant shall also send
20 notice to all persons who have requested the commission in writing
21 to be notified of the subject special management area proceedings.
22 (e) Not less than thirty calendar days prior to the public
23 hearing date, the director shall publish a notice of public hearing,
24 once, in a newspaper that is printed and issued at least twice weekly
25 in the County and which is generally circulated throughout the
26 County, [and] pursuant to section 1-28.5, HRS. The notice shall
27 state the nature of the proposed development, the date, time, and
28 place of the hearing, and all other matters required by law.
29 (f) The director may authorize the consolidation of the
30 hearing with any other hearing required pursuant to law, or
31 pursuant to any rules adopted thereunder.
32 (g) The mailed notice of public hearing shall be deemed
33 adequate, and the failure of any owner to receive such notice shall
34 not invalidate any application, proceedings, assessment, or
35 determination by the commission if the applicant, by affidavit,
36 verifies that the names and addresses of owners of real property
37 situated within five hundred feet of the subject parcel were obtained

1 from the County of Maui real property tax [roll,] division, department
 2 of finance, [and that current ownership was verified with the records
 3 of the County's real property tax division,] within thirty days of the
 4 mailing of the notice of public hearing, stating both the date the
 5 addresses were obtained and the date notice was mailed,
 6 accompanied by receipts of certified or registered mail[.] or evidence
 7 of delivery confirmation. If there are multiple owners of [the] a
 8 property, notification of [the person(s)] all persons listed by name
 9 [on] in the records of the County of Maui real property tax [roll]
 10 division, department of finance, shall be deemed adequate notice as
 11 to all owners. [Eff 1/1/94; am 9/28/97; am 11/13/00] (Auth:
 12 HRS §§91-2, 205A-27) (Imp: HRS §§1-28.5, 205A-29)

13
 14 **§12-202-14 Special management area minor permit**
 15 **procedures.** (a) If [it] the director has [been] determined that the
 16 proposed action is a development and requires a special
 17 management area minor permit, the assessment application
 18 submitted pursuant to section 12-202-12 may be deemed the minor
 19 permit application[.], provided that when development for which a
 20 minor permit is required is started before obtaining a permit, an
 21 additional fee of \$100 shall be paid by the applicant. The payment
 22 of said fee shall not relieve any persons from fully complying with
 23 the requirements of these rules nor from any penalties prescribed in
 24 section 12-202-25.]

25 (b) The director shall approve, approve with conditions, or
 26 deny such permit in accordance with the guidelines in section 205A-
 27 26, HRS, as amended. The director may ask the commission to
 28 approve standard conditions that shall thereafter apply to all minor
 29 permits, in addition to any project-specific conditions, to ensure that
 30 permitted activities comply with chapter 205A, HRS. Any final
 31 decision shall be transmitted to the applicant in writing and shall be
 32 appealable pursuant to section 12-202-26.

33 (c) The director shall notify the commission, at the
 34 commission's next regularly scheduled meeting, of [the issuance by
 35 the director] the director's approval of special management area
 36 minor permits, receipt of which shall be acknowledged by the
 37 commission. Such notification shall include [, but not be limited to,]
 38 the name of each applicant, the proposed development,[authorized

1 by the permit,] and the location and purpose of the development.
 2 [Eff 1/1/94; am 9/28/97, am and comp 12/28/02] (Auth: HRS
 3 §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-26, 205A-29,
 4 205A-30)

5
 6 **§12-202-15 Special management area use permit**
 7 **procedures.** (a) Any person whose proposed [development]

8 action is a development and requires a special management area use
 9 permit, or who has waived an assessment by the department, shall
 10 file an application with the department on a form provided by the
 11 department, which may be required to be filed electronically, and
 12 which shall require:

- 13 (1) All information and documentation required pursuant
 14 to section 12-202-12c, [excluding valuation of the
 15 development;] and
 16 (2) [The real property tax map key number of parcels and
 17 the names and addresses of owners of real property for
 18 real property situated within five hundred feet of the
 19 boundaries of the parcel on which the proposed
 20 development is to occur, obtain from the County of Maui
 21 real property tax division;
 22 (3)] An administrative fee as established in the [county]
 23 County budget.[When development for which a fee is
 24 required is started before obtaining a permit, the fee
 25 shall be doubled.] The payment of the fee for
 26 development without a permit shall not relieve any
 27 persons from fully complying with the requirements of
 28 these rules nor from any penalties prescribed in section
 29 12-202-25.
 30 [(4) Any other relevant information and documentation
 31 required by the director.]

32 (b) Upon receipt of the application, the director shall review
 33 the application based on the policies, objectives, and guidelines as
 34 provided in sections 12-202-10 and 12-202-11 and, if necessary,
 35 request that the applicant provide any additional data or information
 36 as may be required for review of the proposed development. The
 37 application shall not be [deemed complete] transmitted for agency
 38 [transmittal] review until the director is satisfied that the application

1 has fulfilled all application requirements and has addressed the
2 policies, objectives, and guidelines.

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

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

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

29 (f) The commission shall approve a special management area
30 use permit, subject to terms and conditions as permitted in sections
31 205A-26(1) and 205A-26(3), HRS, as amended, and any standard
32 conditions approved by the commission if it finds the criteria set forth
33 in sections 205A-26(2) and 205A-26(3), HRS, as amended, have been
34 met. The commission shall deny a special management area use
35 permit if it finds these criteria have not been met.

1 (g) Findings of fact, conclusions of law, and decision and
2 order shall be issued in accordance with the rules of practice and
3 procedure for the commission in effect when action is taken.

4 (h) The director may ask the commission to approve standard
5 conditions that shall thereafter apply to all permits, in addition to
6 any project-specific conditions, to ensure that permitted activities
7 comply with chapter 205A, HRS. [Eff 1/1/94; am 9/28/97, am and
8 comp 12/28/02, am and comp 4/21/08] (Auth: HRS §§91-2, 91-
9 4.2, 205A-26, 205A-27, 205A-29) (Imp: HRS §§205A-4, 205A-26,
10 205A-28, 205A-29)

11
12 **§12-202-16 Special management area emergency permit**
13 **procedures.**(a) An owner or authorized representative may apply for
14 a special management area emergency permit when the owner or
15 representative has concluded that danger or substantial harm to
16 property, any person, or the public health, safety, and welfare is
17 imminent. The director will consider the application, including best
18 management practices to protect the environment, and determine
19 whether the project is a development and therefore requires a permit,
20 and whether conditions justify issuance of a permit to begin work
21 immediately. The purpose of an emergency permit is to allow an
22 urgently needed protective measure, principally of a temporary
23 nature. The temporary measure may also be allowed as a permanent
24 measure only after the director has determined it is the best
25 environmentally sound alternative. A temporary measure may be
26 allowed for no more than one hundred eighty days while, if necessary,
27 a permanent measure is formulated, permitted, and completed. The
28 director may approve a time extension for a temporary measure when
29 the director determines the permit holder is making adequate
30 progress toward completing a permanent measure, but cannot
31 reasonably do so within the time the emergency permit, or an
32 extension thereof, allows.

33 (b) Any person seeking a special management area emergency
34 permit shall file an application with the director[.] before commencing
35 any emergency work. The application, provided by the department,
36 shall require:

- 1 (1) Identification of the applicant [along with] and
2 documentation of ownership or tenancy and, if the
3 applicant is not the owner, authorization by the [owners]
4 owner of the parcel on which the proposed action is to
5 occur; if the parcel has more than one owner and does
6 not have a managing association authorized to submit
7 the application, evidence of notification to all owners
8 shall be provided.
- 9 (2) The tax map key [number(s)] number and acreage or
10 square footage of the parcel on which the proposed
11 action is to occur;
- 12 (3) A written description of the proposed action, including [,
13 but not limited to,] the length, width, height, [depth,] and
14 type of materials, [for any proposed action] size of
15 structures in square feet and, if applicable, area, depth,
16 or volume of grubbing, grading, or fill and any other
17 ground-altering activity;
- 18 (4) A written statement of the emergency or imminent
19 danger[and] or substantial harm to property, any
20 person, or the public health, safety, or welfare; and why
21 the proposed development would be immediately
22 required to prevent danger or substantial [physical]
23 harm [to persons or property, or to allow the
24 reconstruction of structures damaged by natural
25 hazards to their original form];
- 26 (5) The most current shoreline survey, if available and
27 applicable;
- 28 (6) Photographs [or VHS format video tape] identifying [the
29 emergency at the affected area and shoreline property
30 boundaries] where the emergency exists and where the
31 action is to occur; video may also be provided;
- 32 (7) Any other relevant information requested by the director;
33 [and]
- 34 (8) Electronic copies of all application documents; and
- 35 (9) An administrative fee as established in the County
36 budget.

1 [(b)](c)The director may [waive] allow the deferral of the filing of
 2 a written application [where] if the applicant demonstrates to the
 3 satisfaction of the director that imminent danger [and] or substantial
 4 harm to a habitable structure, any person, or the public health,
 5 safety, or welfare would result from the delay in filing a written
 6 application. After giving verbal approval [of an oral] to such a
 7 request, the director shall issue a written [permit,] confirmation of
 8 the verbal approval, which shall contain:

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

25 [(c)] (d) [Not more than ten calendar days after the date of
 26 the oral request, the applicant shall submit the required written
 27 emergency permit application. If the applicant fails to submit such
 28 application, information, and documentation within the ten day
 29 period, the director may require that the temporary measures be
 30 removed.] No special management area emergency permit shall allow
 31 the reconstruction of structures if such structures were not lawfully
 32 constructed.

33 [(d)] (e)[Except as provided in subsection (e),] After reviewing a
 34 written application, the director shall issue a written special
 35 management area emergency permit where the applicable provisions
 36 of this section have been met and;

- 1 (1) The]the director finds the criteria set forth in sections
2 205A-22 and 205A-30, HRS, as amended, have been
3 met.];
- 4 (2)] In the event of impending or presently occurring
5 disaster, the mayor [has waived] may waive the
6 requirements of sections 12-202-12, 12-202-14, or 12-
7 202-15, but not this section.]; or
- 8 (3) In the event of a state-declared emergency, the governor,
9 after conferral with and the recommendation of the
10 mayor, has waived the requirements of sections 12-202-
11 12, 12-202-14, or 12-202-15.
- 12 (e) No special management area emergency permit shall allow
13 the reconstruction of structures damaged by natural hazards to their
14 original form if such structures were previously found not to be in
15 compliance with the federal flood insurance program or were not
16 legally constructed.]
- 17 (f) The director may place reasonable terms, conditions, and
18 time stipulations upon such permit.
- 19 (g) The director shall set [an expiration] a date [for the permit,
20 not to exceed one hundred eighty days, and set a time limitation
21 within] by which the applicant shall [apply] submit an application for
22 a permit pursuant to sections 12-202-14 or 12-202-15[.], or by which
23 the applicant must remove or terminate any temporary measures.
- 24 (h) For an emergency permit request that is the result of or that
25 otherwise involves coastal erosion, the director shall consult with the
26 State department of land and natural resources, office of
27 conservation and coastal lands, or other relevant State agency, on
28 whether to approve any temporary measure in order to benefit both
29 the applicant and neighboring shoreline properties, to resolve the
30 emergency situation expeditiously, and to minimize the
31 environmental impact to the coastal zone. Any such approval, in
32 addition to any project-specific conditions, shall include the following
33 conditions:
- 34 (1) Within ninety days, the applicant shall provide the
35 department a description of potential long-term
36 alternatives designed to alleviate the emergency
37 situation, which shall include:

- 1 (A) alternatives, including relocation of threatened
2 structures or elevation of structures, and dune or beach
3 restoration;
4 (B) assessment of other viable alternatives, which may
5 include protective or erosion control measures, such as
6 groins, and offshore structures such as breakwaters;
7 (C) a description of how each alternative complies with
8 chapter 12-203 of the commission's shoreline rules, if
9 applicable;
10 (C) a draft timeline to plan, design and complete each
11 long-term alternative; and
12 (D) a list of potential federal, State, and County permits
13 required to achieve each long-term alternative.
14 (2) Within ninety days of the permit's approval, the permit
15 holder shall consult with the department about
16 identified long-term alternatives to understand the
17 requirements and restrictions for work permitted in the
18 shoreline area, as defined in the commission's shoreline
19 rules, if applicable.
20 (3) The temporary measure must be removed unless the
21 permit holder submits an application by the date
22 specified by the emergency permit to allow the temporary
23 measure to remain, pursuant to subsection (i).
24 (i) No less than thirty days prior to the expiration date of an
25 emergency permit, the permit holder may apply for a time extension
26 for any permit provision on a form provided by the department. Such
27 application shall include, at a minimum:
28 (1) a description of the permit holder's preferred alternative;
29 (2) evidence that the permit holder is making adequate
30 progress toward completing permanent measures, but
31 reasonably cannot do so within the time allowed by the
32 emergency permit; and
33 (3) a plan and timeline for obtaining all required permits.
34 The director may approve a time extension for no more than
35 one hundred eighty days at a time.
36 (i) If the director finds there is no imminent danger or
37 substantial harm to a habitable structure, any person, or the public

1 health, safety, or welfare, or that the requirements of subsection (h)
 2 were not met, the director shall deny the emergency permit. If the
 3 director denies the emergency permit, the denial shall be in writing,
 4 setting forth facts sufficient to demonstrate the application did not
 5 meet the requirements for issuance of the emergency permit
 6 pursuant to subsection (h). The director shall notify the applicant it
 7 can submit an application for an assessment, a special management
 8 area use or minor permit in accordance with these rules, and shall
 9 inform the applicant of the right to appeal pursuant to section 12-
 10 202-26.

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

17 (i) If the director denies the emergency permit, the denial
 18 shall be in writing, setting forth facts sufficient to demonstrate the
 19 application did not meet the requirements for issuance of the
 20 emergency permit pursuant to subsection (d). The applicant shall be
 21 informed of his right to appeal pursuant to section 12-202-26
 22 herein.] [Eff 1/1/94; am 9/28/97] (Auth: HRS §§91-2, 205A-27,
 23 205A-29) (Imp: HRS §§91-2, 91-14, 205A-30)

24
 25 **§12-202-17 Amendments to [and determinations of]**
 26 **permit [terms, conditions, and time stipulations] approvals.** (a)
 27 Request. Any person who has been issued a special management
 28 area emergency permit, minor permit, or use permit may request the
 29 director or commission, as appropriate, to amend [, delete, or
 30 determine] any [conditions placed upon such] permit approval.

31 (b) Form. Any person seeking to amend [, delete, or determine]
 32 a permit [condition]approval shall file an application with the
 33 department in a form provided by the department, the content of
 34 which shall include:

- 35 (1) [The term, condition, or time stipulation to be amended,
 36 deleted, or determined;

- 1 (2) If an extension of a time stipulation is requested, the
2 length of time extension desired] A description of the
3 requested amendment;
- 4 ~~[(3)]~~(2) The reasons and justification for the [requested
5 amendment, deletion, or determination] request;
- 6 ~~[(4)]~~ (3) An administrative fee as established in the County
7 budget; [and]
- 8 (4) If the request is for a permit transfer, the transferor's
9 consent and a notarized affidavit from the transferee
10 acknowledging and agreeing to comply with the permit
11 approval;
- 12 (5) If the request is to amend a time stipulation, the length
13 of time requested, an analysis of whether any changes
14 have occurred within the special management area since
15 the granting of the permit that may cause the permit
16 holder's development to have a substantial adverse
17 environmental or ecological effect or adversely affect the
18 capacity or condition of infrastructure; and
- 19 ~~[(5)]~~(6) Any other information and documentation requested by
20 the director.
- 21 (c) Unless otherwise provided, any application for an
22 extension of a time stipulation must be filed not less than sixty
23 calendar days prior to the expiration date of the time condition,
24 provided that the director for good cause may waive such sixty day
25 requirement.

1 Unless waived by the applicant and the director, notice of the public
2 hearing to amend or determine the permit shall be given pursuant to the
3 procedures set forth in section 12-202-13. A public hearing shall not be waived
4 if a petition to intervene was filed or any person, other than the applicant, was
5 admitted as a party to any prior proceeding on the matter, unless a written
6 waiver from all parties has been received by the department. In instances in
7 which the proposed amendment or determination does not clearly pertain to or
8 could not affect the same rights, privileges or interests on which the intervention
9 was based, a written waiver from all parties shall not be required for purposes of
10 waiving a public hearing.] If applicable, the director shall circulate the request
11 to appropriate agencies for review and comment.

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

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

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

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

- 34 [(1) Reason(s) for permit time extension;
- 35 (2) Length of time extension requested;
- 36 (3) An analysis of whether any changes have occurred within the special
37 management area since the granting of the permit that may cause
38 the permit holder's development to have a substantial adverse
39 environmental or ecological effect; and
- 40 (4) An analysis of whether any changes have occurred within the special
41 management area since the granting of the permit that may cause
42 the permit holder's development to adversely affect the capacity or
43 condition of infrastructure.

1 If] the director determines that there have been no changes within the special
2 management area since the granting of the permit that will cause the permit
3 holder's development to have any substantial adverse environmental or
4 ecological effect[, and that there have been no changes within the special
5 management area since the granting of the permit that will cause the permit
6 holder's development to]or adversely affect the condition or capacity of
7 infrastructure.], the director may grant up to a two-year time extension.]

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

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

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

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

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

39 (e) Amendment or determination other than transfer or time extension.
40 Unless otherwise specified in the permit approval, the director may approve or
41 deny nonsubstantive amendments to the permit and may make determinations
42 regarding permit approvals when such amendments or determinations are
43 nonsubstantive. If the director determines that the requested amendment or
44 determination is substantive, then the director shall forward the request to the

1 commission for action. The director shall determine whether a public hearing
 2 shall be held and, [(f) After review and final comment by appropriate agencies,
 3 the application shall be deemed complete by the director, and the application
 4 shall be referred to the commission and,] if a public hearing is required, set a
 5 date for the hearing and provide notice as required by section 12-202-13. The
 6 commission shall conduct a hearing in accordance with the procedures set forth
 7 in its rules.

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

25 (g) Commission action. Findings of fact, conclusions of law, and decision
 26 and order for any special management area use permit application seeking to
 27 amend[, delete,] or determine any permit [terms, conditions, and time
 28 stipulations]approval shall be issued in accordance with the rules of practice and
 29 procedure of the commission in effect when action is taken and the review
 30 guidelines as set forth in section 12-202-11. [Eff 1/1/94; am 9/28/97, am and
 31 comp 4/21/08] (Auth: HRS §§91-2, 205A-29, 205A-30) (Imp: HRS §§205A-26,
 32 205A-29)

33
 34 §12-202-18 (Reserved)

35 §12-202-19 (Reserved)

36 §12-202-20 (Reserved)]

37

38

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]these 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]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)] (c) 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, [and] 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.

1 The notice published in the newspaper shall be deemed adequate, and the
 2 failure of any owner to receive such notice shall not invalidate any amendments,
 3 proceedings, assessment, or determination by the commission.

4 ~~[(e)]~~(d) The commission may amend the special management area
 5 boundaries only upon the finding that the amendments will further the
 6 objectives and policies of chapter 205A, HRS, as amended, and will be consistent
 7 with the general plan and other applicable ordinances of the County of Maui.
 8 Upon review of the State of Hawaii office of planning, pursuant to section 205A-
 9 23, HRS, the commission shall render a final decision and issue a written order
 10 and, if applicable,[may] direct the director to issue a [written order and] final
 11 map within sixty calendar days after the final vote of the commission, unless
 12 otherwise extended by vote of the [members of the] commission. [Eff 1/1/94;
 13 am 9/28/97; am 11/13/00] (Auth: HRS §91-2) (Imp: HRS §§1-28.5, 205A-23)
 14

15 **§12-202-23 Enforcement.** (a) The [appropriate enforcement agency as
 16 designated by the County Charter] director shall enforce these rules, except as
 17 otherwise provided herein.

18 (b) Any [development]use, activity, or operation pursuant to these rules
 19 and section 205A-22, HRS, as amended, that [has not received a
 20 required]requires and fails to obtain a special management area exemption,
 21 emergency permit, minor permit, or use permit [pursuant to this part] or has
 22 failed to comply[complied] with conditions established with any such [a] permit,
 23 is a violation of these rules and chapter 205A, HRS.[shall be removed or the
 24 violation shall be corrected by immediate application for and subsequent
 25 granting of the appropriate permit or other means as determined by the
 26 director.]The violation shall be corrected by requiring the owner or violator to pay
 27 all applicable fines and take the following corrective actions:

- 28 (1) Any unpermitted use, activity, or operation has ceased;
- 29 (2) Any unpermitted construction has been removed with appropriate
 30 permits;
- 31 (3) An exemption, emergency permit, minor permit, permit amendment,
 32 or use permit has been issued; or
- 33 (4) Other means determined by the director have been achieved.

34 Applicable fines shall accrue until the violation is corrected. No other [state or
 35 county] permit or approval shall be construed as special management area
 36 permit approval pursuant to this part.

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

- 44 (d) Issuance of notice of violation and order.

- 1 (1) The [landowner] owner shall, and[or] the alleged violator may, [or
 2 both, shall] be notified by the enforcement agency [by certified or
 3 registered mail] of an alleged violation of [this rule,]these rules and
 4 any approval, permit, or permit condition issued pursuant thereto. [,
 5 or any condition of a special management area permit approval.]The
 6 director shall provide service by at least one of the following
 7 methods, in order of preference, as the director deems appropriate:
 8 certified or registered mail, regular mail with delivery confirmation,
 9 personal service, posting on the property, or publishing the notice
 10 once per week for three consecutive weeks in a newspaper that is
 11 printed and issued at least twice weekly in the County and is
 12 generally circulated through the County. The date of service shall be
 13 the date on which the certified or registered mail is accepted, the
 14 date of regular mail delivery confirmation, the date of personal
 15 service, the date of posting on the property, or the date of the last
 16 publication in the newspaper. If the director uses more than one
 17 method of service, then the date of service shall be the later of the
 18 dates of service.
- 19 (2) The notice of violation and order shall include [, but not be limited
 20 to,] the specific section of [this rule which] these rules that has been
 21 violated[.]; the nature of the violation[.]; and the [remedy(ies)] remedy
 22 required or available[.], including cessation or removal of the
 23 violation, subject to applicable permitting requirements;]. The
 24 notice of violation and order may also require that the violative
 25 activity cease, or that the violative development be removed;] that [a]
 26 an initial civil fine be paid not to exceed \$100,000 per violation; [and]
 27 that a civil fine be paid not to exceed \$10,000 per day for each day
 28 in which the violation persists, in addition to the foregoing and any
 29 other penalties[.]; and that the landowner or violator may appeal the
 30 notice of violation pursuant to section 12-202-26 within thirty days
 31 of the date of service. The filing of an appeal shall not correct or
 32 suspend any violation or stay the assessment and accumulation of
 33 finest. The following criteria shall be considered in assessing the
 34 initial and daily fines:
- 35 (A) Previous violations by the same person;
 - 36 (B) The degree of damage or potential damage to the environment,
 37 including damage to the shoreline and marine resources;
 - 38 (C) The degree of cooperation provided by the violator during the
 39 investigation;
 - 40 (D) Amount necessary to deter future violations; and
 - 41 (E) Evidence of circumstances beyond the control of the violator.
- 42 [(2) The notice of violation and order shall state that the order shall
 43 become final thirty days after the date of its mailing unless written
 44 request for a hearing is mailed or delivered to the enforcement

1 agency within said thirty days. Nothing in this section shall prevent
 2 the landowner or violator from seeking to negotiate a settlement or
 3 resolve a dispute.

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

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

19 (5) [(3)] The department, in consultation with the department of the
 20 corporation counsel, may institute a civil action in any court of
 21 competent jurisdiction for the enforcement of any settlement
 22 agreement or order issued pursuant to this section.

23 [(6)] [(4)] Nothing in this section shall prohibit the department, through the
 24 corporation counsel, from filing an order or motion directly with a
 25 court in the event that public health, safety and welfare may be at
 26 risk. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-43, 205A-43.6)
 27 (Imp: HRS §43.6)

28
 29 **§12-202-24 Conflicts with other laws.** In case of a conflict between the
 30 requirements of any other [state] State law or [county] County ordinance
 31 regarding the special management area, the more restrictive requirements shall
 32 apply in furthering the purposes of this part. Nothing contained in this part
 33 shall be construed to diminish the jurisdiction of the [state] State department of
 34 transportation over wharves, airports, docks, piers, or other commercial harbors,
 35 and any other maritime facilities constructed by the [state] State; provided that
 36 such plans are submitted for the review and information of the officer of the
 37 respective agency charged with the administration of the [county] County zoning
 38 laws, and found not to conflict with any [county] County ordinances, zoning laws,
 39 and building codes. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-48) (Imp: HRS
 40 §205A-48)

41
 42 **§12-202-25 Penalties.** Any person who violates any provision of these
 43 rules shall be liable for an initial civil fine not to exceed \$100,000 per violation
 44 and maximum daily fine of \$10,000 in addition to any other penalties until the

1 violation is [corrected.]remedied. A civil fine may be imposed by the department
2 after an opportunity for [a] an appeal hearing under chapter 91, HRS, as
3 amended, and subsection 12-202-26(b) herein.[unless said hearing is otherwise
4 waived.] A special management area permit application submitted subsequent
5 to an applicant's having completed the development or having been cited for the
6 activity or construction without having obtained special management area
7 approval, shall not stay any order to pay civil fines~~[.]~~, including initial and
8 accumulating daily fines. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-32) (Imp:
9 HRS §§205A-22, 205A-26, 205A-28, 205A-29, 205A-30, 205A-33)

10
11 **§12-202-26 Appeal of director's decision; filing the notice of appeal;**
12 **settlement of appeal.** (a)For decisions other than enforcement proceedings
13 pursuant to section 12-202-23, appeal of the director's decision may be made to
14 the commission by the filing of a notice of appeal with the department not later
15 than ten days after the receipt of the director's written decision, or, where the
16 director's decision is not required by the commission or these rules to be served
17 upon appellant, not later than ten days after the meeting at which the
18 commission received notification of the director's decision. For enforcement
19 proceedings pursuant to section 12-202-23, appeal of a notice of violation may
20 be made to the commission by the filing of a notice of appeal with the department
21 within thirty days of the date of service. The notice of appeal shall be filed in
22 accordance with section 12-201-20 of the rules of practice and procedure for the
23 Maui planning commission. The department shall notify the commission, at the
24 commission's next regularly scheduled meeting, of the filing of the notice of
25 appeal.

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

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

40 (d) If the director and the owner or violator agree on a resolution that
41 involves a waiver of fines totaling \$50,000 or greater, then the director will notify
42 the owner or violator in writing and establish which party shall draft the
43 agreement. The agreement shall be submitted to the commission for final action.
44 The commission may accept, accept with modifications, or reject the agreement.

1 (e) If the director and the owner or violator do not agree on a resolution,
 2 the director will notify the owner or violator in writing of the director's
 3 termination of the negotiation. Submittal of any request for a negotiated
 4 resolution shall not affect the accrual of daily fines or any time limitations for
 5 appealing the notice of violation and order to the commission. [Eff 1/1/94; am
 6 and comp 9/28/97; am and comp 11/4/02] (Auth: Charter §§ 8-8.4, 13-
 7 2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

8
 9 **§12-202-27 Content of the [notice of] appeal.** The [notice of] appeal to
 10 the commission shall identify the party [or parties taking] making the appeal [in
 11 the caption and body of the notice of appeal]. The [notice of] appeal shall
 12 designate the decision appealed from and shall state the reasons for the appeal.
 13 [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS
 14 §§205A-29, 205A-30, 205A-49)

15
 16 **§12-202-28 Joint or consolidated appeals.** If two or more parties are
 17 entitled to appeal [from] a decision of the director to the commission and their
 18 interests are such as to make joinder practicable, they may file a joint appeal
 19 and thereafter proceed on appeal as a single appellant. Appeals that are filed
 20 separately may be consolidated by order of the commission upon the
 21 commission's own motion, upon motion of a party, or upon stipulation of the
 22 parties to the several appeals. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-
 23 8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

24
 25 **§12-202-29 Service of the [notice of] appeal.** If the appellant is
 26 someone other than the applicant, appellant shall serve a file-marked copy of the
 27 appeal by mail or delivery thereof to counsel of record for each other party, or, if
 28 a party is not represented by counsel, to the party at the party's last known
 29 address. Proof of service shall be filed with the department within seven days
 30 after the filing of the [notice of] appeal[.], and the department shall notify the
 31 commission of the filing of the appeal at the next regular meeting. [Eff 11/4/02;
 32 comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS §§205A-29, 205A-30,
 33 205A-49)

34
 35 **§12-202-30 Payment of fees.** Upon the filing of any separate or joint
 36 [notice of] appeal, the appellant shall pay such fees as are set forth in the County
 37 budget ordinance. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-
 38 2.15)(Imp: HRS §§205A-29, 205A-30, 205A-49)

39
 40 **§12-202-31 Contested case hearing on appeal.** The commission shall
 41 hold a contested case hearing on the appeal. The director, the appellant, the
 42 owner, and, where the appellant is someone other than the applicant, the
 43 applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of the
 44 rules of practice and procedure for the Maui planning commission, relating to

1 petitions to intervene, contested case procedures, and [posthearing] post-hearing
2 procedures, respectively, shall govern the proceedings, except that petitions to
3 intervene on an appeal shall be filed with the commission no later than ten days
4 after the meeting at which the commission received notification of the filing of an
5 appeal. [Eff 11/4/02; comp 11/4/02] (Auth: Charter §§8-8.4, 13-2.15)(Imp: HRS
6 §§205A-29, 205A-30, 205A-49)
7

8 **§12-202-32 Disposition of appeal.** The commission may affirm the
9 decision of the director, or may remand the case to the hearing officer, if any,
10 with instructions for further proceedings; or it may [reverse]modify the decision
11 of the director if the substantial rights of the appellant may have been prejudiced
12 because the decision is:

- 13 (1) Based on clearly erroneous findings of material fact or erroneous
14 application of the law; or
- 15 (2) Arbitrary or capricious in its application; or
- 16 (3) A clearly unwarranted abuse of discretion. [Eff 11/4/02; comp
17 11/4/02; am and comp 12/20/04] (Auth: HRS §§91-14(g)(6), 205A-
18 43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter
19 §§8-8.4, 13-2(15)) (Imp: HRS §§205A-29, 205A-30, 205A-43, 205A-
20 43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4,
21 13-2(15))
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TITLE MC-12
DEPARTMENT OF PLANNING
SUBTITLE 02
MAUI PLANNING COMMISSION
CHAPTER 203
SHORELINE RULES FOR THE MAUI PLANNING COMMISSION

Subchapter 1	General Provisions
§12-203-1	Title
§12-203-2	Purpose
§12-203-3	Applicability
§12-203-4	Definitions
§12-203-5	Severability
Subchapter 2	Shoreline Setback Lines; Shoreline Area
§12-203-6	Establishment of shoreline setback lines
§12-203-7	Request for [a shoreline setback determination or an annual erosion hazard rate amendment] <u>an amendment to a shoreline setback line established by the erosion hazard line</u>
§12-203-8	Determination of the shoreline
§12-203-9	Site plans
§12-203-10	Structures and activities subject to these rules
§12-203-11	Prohibited activities within the shoreline area
§12-203-12	Permitted structures and activities within the shoreline [setback] area.
§12-203-13	Request for [a determination] <u>approval of structures and activities in the shoreline[setback] area</u>

1 Subchapter 3 Variances
2
3 §12-203-14 Variance application
4 §12-203-15 Criteria for approval of a variance
5
6
7 Subchapter 4 Enforcement; Penalties
8
9 §12-203-16 Enforcement
10 §12-203-17 Penalties
11
12
13 Subchapter 5 Appeals
14
15 §12-203-18 Appeal of director's decision; filing the notice of
16 appeal
17 §12-203-19 Content of the notice of appeal
18 §12-203-20 Joint or consolidated appeals
19 §12-203-21 Service of the notice of appeal
20 §12-203-22 Payment of fees
21 §12-203-23 Contested case hearing on appeal
22 §12-203-24 Disposition of appeal
23

24 **SUBCHAPTER 1**

25 **GENERAL PROVISIONS**

26
27
28
29 **§12-203-1 Title.** The rules in this chapter shall be known as the
30 "Shoreline Rules for the Maui Planning Commission." [Eff 11/27/03]
31 (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4,
32 13-2(15)) (Imp: HRS Chapter 205A, Parts I and III; Maui County Charter
33 §§8-8.4, 13-2(15))
34

35 **§12-203-2 Purpose.** (a) The purpose of this chapter is to establish
36 shoreline rules which regulate the use and activities of land within the
37 shoreline environment in order to protect the health, safety, and welfare of
38 the public by providing minimum protection from known coastal natural
39 hazards; and to ensure that the public use and enjoyment of our shoreline
40 resources are preserved and protected for future generations in

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

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

7 (1) That use and enjoyment of the shoreline area be ensured for
8 the public to the fullest extent possible;

9 (2) That the natural shoreline environment be preserved;

10 (3) That [man-made] constructed features in the shoreline area
11 be limited to features compatible with the shoreline area;

12 (4) That the natural movement of the shoreline be protected from
13 development;

14 (5) That the quality of scenic and open space resources be
15 protected, preserved, and where desirable, restored; and

16 (6) That adequate public access to and along the shoreline be
17 provided.

18 These steps are necessary because development and other [man-
19 made] constructed improvements have resulted in encroachment of
20 structures near the shoreline and, in numerous instances, erosion and
21 other disturbances affecting the natural movement of the shoreline.
22 Moreover, these steps are also necessary because the Hawaiian Islands are
23 subject to coastal natural hazards such as tsunamis, high wave action,
24 sea level rise, hurricanes, coastal flooding, and coastal erosion that pose
25 hazards to residences and other structures near the shoreline. [These
26 hazards may also necessitate the need to harden the shoreline to protect
27 structures which may have an adverse impact on the environment.
28 Further, continual replacement of structures damaged or destroyed by
29 ocean conditions may cause an economic hardship to other flood
30 insurance policy holders by the increase in premiums. Consequently, the
31 purpose of this chapter is to establish shoreline rules which regulate the
32 use and activities of land within the shoreline environment in order to
33 protect the health, safety, and welfare of the public by providing minimum
34 protection from known coastal natural hazards; and to ensure that the
35 public use and enjoyment of our shoreline resources are preserved and
36 protected for future generations in accordance with the Hawaii coastal
37 zone management law, HRS chapter 205A.] Shoreline hardening has
38 historically been the response to impacts from coastal hazards, and this
39 approach is now widely recognized in most cases to have an adverse
40 impact on neighboring properties and the environment. To prioritize

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1 coastal resilience, and to preserve and restore environmental and cultural
2 resources, preferred alternatives include options for nature-based
3 protection, and to avoid, accommodate, or retreat from coastal hazards.
4 [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I and III; Maui County
5 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-
6 43.5, 205A-43.6, 205A-45, 205A-49)
7

8 **§12-203-3 Applicability.** These rules shall be applicable to all
9 lands located within the shoreline area of the Island of Maui, County of
10 Maui, State of Hawaii. [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I
11 and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1,
12 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)
13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 "Commission" means the Maui planning commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 "Minor structure" means the following:

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

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

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

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

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

1 shoreline;

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

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

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

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

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

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

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

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

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

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

26 (1) Property boundaries;

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

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

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

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

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

37 (1) Will not adversely affect beach processes;

38 (2) Will not artificially fix the shoreline;

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

1 reasons during demolition operations;

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

4 (5) Will be consistent with:

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

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

12 (6) Will comply with:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5,
2 205A-43.6, 205A-45, 205A-49)

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SUBCHAPTER 2

SHORELINE SETBACK LINES; SHORELINE AREA

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§12-203-6 Establishment of shoreline setback lines. (a) All lots shall have a shoreline setback line that is [the greater of the distances from the shoreline as calculated under the methods listed below or the overlay of such distances:] established as follows:

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

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

(A) If the shoreline is established by a certified shoreline survey, then the shoreline setback line shall be calculated based on the lots depth as follows:

[(A) A lot with an average lot depth of one hundred feet or less shall have a shoreline setback line twenty-five feet from the shoreline] (i) A lot that is not an irregularly shaped lot and that has an average lot depth of one hundred sixty feet or less shall have a shoreline setback line forty feet from the shoreline;

[(B) A lot with an average lot depth of more than one hundred feet but less than one hundred sixty feet shall have a shoreline setback line forty feet from the shoreline;

(C) A lot with an average lot depth of one hundred sixty feet or more shall have a shoreline setback line located at a distance from the shoreline equal to twenty-five percent of the average lot depth, but not more than one hundred fifty feet.] (ii) A lot that is not an irregularly shaped lot and that has an average lot depth of more than one hundred sixty feet shall have a shoreline setback line located at a distance from the shoreline

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

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

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

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

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

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

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

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

7
8 **§12-203-7 Request for [a shoreline setback determination or an**
9 **annual erosion hazard rate amendment.] an amendment to a**
10 **shoreline setback line established by the erosion hazard line or the**
11 **approximate shoreline mapped by the department.** (a) A request for[a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 turbidity or would otherwise be detrimental to the shoreline environment.
2 [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County
3 Charter §§8-8.4, 13-2(15)) (Imp: HRS §§46-11.5, 46-12, 205A-43.6, 205A-
4 44, 205A-45)

5
6 **§12-203-12 Permitted structures and activities within the**
7 **shoreline [setback]area.**(a) The following structures and activities
8 [are]may be permitted in the shoreline [setback] area subject to the
9 application and approval procedures pursuant to section 12-203-13:

- 10 (1) Existing lawful nonconforming [structures/activities.]
11 structures or activities.
- 12 (2) A structure or activity that received a shoreline variance or
13 administrative approval from the director prior to the adoption
14 of these rules provided [.] Said] the variance/approval [be]
15 remains valid.
- 16 (3) A structure or activity that is necessary for, or ancillary to,
17 continuation of agriculture or aquaculture existing in the
18 shoreline [setback] area on June 16, 1989.
- 19 (4) A structure or activity that consists of maintenance, repair,
20 reconstruction, and minor additions or alterations of legal
21 boating, maritime, or water sports recreational facilities,
22 [which are publically owned,] and Hawaiian fishponds, and
23 [which result] that results in no interference with natural
24 beach processes; provided that the permitted structure may
25 be repaired, but shall not be enlarged within the shoreline
26 [setback] area without a variance.
- 27 (5) A structure, excluding those defined as lawful nonconforming,
28 that received a written government approval and is the subject
29 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

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

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

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.

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

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

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

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

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

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

(E) The repairs or complete reconstruction shall have the same or a smaller footprint, shall be in the same location or be located mauka or be in an area less vulnerable to coastal hazards; alternatively, the repairs or complete reconstruction shall be conforming; and

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

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

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

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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

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

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

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

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

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

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

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

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

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

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

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

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

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SUBCHAPTER 3

VARIANCES

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6 **§12-203-14 Variance application.** (a) A written application for a
7 variance from shoreline setback requirements shall be made in a form
8 prescribed by the director and shall be filed with the director. The
9 application shall include development plans, site plans, photographs, and
10 any other plans, drawings, maps, or information determined by the
11 director to be necessary to evaluate the application. The application shall
12 also include:

- 13 (1) An administrative fee as established in the County budget;
14 (2) Certification from the owner or lessee of the lot [which
15 authorizes] authorizing the application for variance;
16 (3) An environmental assessment or environmental impact
17 statement prepared in accordance with HRS chapter 343, and
18 the environmental impact statement rules and applicable
19 guidelines of the State of Hawaii, or an exemption
20 determination;
21 (4) The names, addresses, and the tax map key identification of
22 owners of real property situated adjacent to and abutting the
23 boundaries of the land on which the proposed use, activity, or
24 operation is to occur;
25 (5) A site plan of the shoreline [setback] area, drawn to scale,
26 showing:
27 (A) Existing natural and [man-made] constructed features
28 and conditions within the shoreline [setback] area;
29 (B) Existing natural and [man-made] constructed features
30 and conditions along properties immediately adjacent to
31 the shoreline [setback] area and proposed
32 improvements;
33 (C) The certified shoreline and the shoreline setback line;
34 (D) Contours at a minimum interval of two feet unless
35 waived by the director; and
36 (E) Proposed development and improvements showing new
37 conditions;
38 (6) A copy of the certified shoreline survey of the property;

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

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

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

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

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

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

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

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

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

SUBCHAPTER 4

ENFORCEMENT; PENALTIES

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6 **§12-203-16 Enforcement.**(a)The director shall enforce these rules
7 in accordance with HRS chapter 205A. [Eff 11/27/03] (Auth: HRS §205A-
8 43.6; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.6)

9 (b) Any use, activity, or operation pursuant to these rules and
10 chapter 205A, HRS, as amended, that requires and fails to obtain shoreline
11 approval or a variance, or has failed to comply with conditions established
12 with any such approval, is a violation of these rules and chapter 205A,
13 HRS. The violation shall be corrected by requiring the owner or violator to
14 pay all applicable fines and take the following corrective actions:

- 15 (1) any unpermitted use, activity, or operation has ceased;
16 (2) any unpermitted construction has been removed with
17 appropriate permits;
18 (3) a shoreline approval or variance has been issued; or
19 (4) other means determined by the director have been achieved.

20 Applicable fines shall accrue until the violation is corrected. No other
21 permit or approval shall be construed as shoreline approval pursuant to
22 this part.

23 (c) If a portion of a constructed structure is situated within the
24 shoreline area, and the structure has not been authorized with
25 government agency permits required by law, then for purposes of
26 enforcement of this part, the entire structure shall be construed to be
27 entirely within the shoreline area and shall be subject to enforcement
28 accordingly.

29 (d) Issuance of notice of violation and order.

- 30 (1) The owner shall, and the alleged violator may, be notified by
31 the enforcement agency of an alleged violation of these rules
32 and any approval, variance, or condition issued pursuant
33 thereto. The director shall provide service by at least one of
34 the following methods as the director deems appropriate:
35 certified or registered mail, regular mail with delivery
36 confirmation, personal service, posting on the property, or
37 publishing the notice once per week for three consecutive
38 weeks in a newspaper that is printed and issued at least twice

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

- 9 (2) The notice of violation and order shall include the specific
10 section of these rules that has been violated; the nature of the
11 violation; and the remedy required or available, including
12 cessation or removal of the violation, subject to applicable
13 permitting requirements; that an initial civil fine be paid not
14 to exceed \$100,000 per violation; that a civil fine be paid not
15 to exceed \$10,000 per day for each day in which the violation
16 persists, in addition to the foregoing and any other penalties;
17 and that the landowner or violator may appeal the notice of
18 violation pursuant to section 12-203-18 within thirty days of
19 the date of service. The filing of an appeal shall not correct or
20 suspend any violation or stay the assessment and
21 accumulation of fines. The following criteria shall be
22 considered in assessing the initial and daily fines:
23 (A) Previous violations by the same person;
24 (B) The degree of damage to the environment, including
25 damage to the shoreline and marine resources;
26 (C) The degree of cooperation provided by the violator
27 during the investigation;
28 (D) Amount necessary to deter future violations; and
29 (E) Evidence of circumstances beyond the control of the violator.
30 (3) The department, in consultation with the department of the
31 corporation counsel, may institute a civil action in any court
32 of competent jurisdiction for the enforcement of any
33 settlement agreement or order issued pursuant to this
34 section.
35 (4) Nothing in this section shall prohibit the department, through
36 the corporation counsel, from filing an order or motion directly
37 with a court in the event that public health, safety and welfare
38 may be at risk. [Eff 1/1/94; am 9/28/97] (Auth: HRS §205A-

1 43, 205A-43.6) (Imp: HRS §43.6)
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3 **§12-203-17 Penalties.** Any person who violates any provision of
4 these rules shall be subject to the penalties provided for in HRS §205A-32.
5 [Eff 11/27/03] (Auth: HRS §§205A-32, 205A-43.6; Maui County Charter
6 §§8-8.4, 13-2(15)) (Imp: HRS §205A-32)
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10 **SUBCHAPTER 5**

11 **APPEALS**
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15 **§12-203-18 Appeal of director's decision; filing the notice of**
16 **appeal.** Appeal of the director's decision including, but not limited to, the
17 validity of the [annual erosion hazard rate, and] erosion hazard line, and
18 the determination of minor [structures/activities,] structures or activities,
19 may be made to the commission by the filing of a notice of appeal with the
20 department not later than ten days after the receipt of the director's written
21 decision or, where the director's decision is not required by the
22 commission or these rules to be served upon appellant, not later than ten
23 days after the meeting at which the commission received notification of the
24 director's decision. The notice of appeal shall be filed in accordance with
25 section 12-201-20 of the rules of practice and procedure for the Maui
26 planning commission. The department shall notify the commission, at the
27 commission's next regularly scheduled meeting, of the filing of the notice
28 of appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6,
29 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS
30 §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County
31 Charter §§8-8.4, 13-2(15))
32

33 **§12-203-19 Content of the notice of appeal.** The notice of appeal
34 shall identify the party or parties making the appeal in the caption and
35 body of the notice of appeal. The notice of appeal shall designate the
36 decision appealed from and shall state the reasons for the appeal. [Eff
37 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-
38 49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-

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1 43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-
2 2(15))

3
4 **§12-203-20 Joint or consolidated appeals.** If two or more parties
5 are entitled to appeal from a decision of the director and their interests are
6 such as to make joinder practicable, they may file a joint notice of appeal
7 and thereafter proceed on appeal as a single appellant. Appeals may be
8 consolidated by order of the commission upon the commission's own
9 motion, upon motion of a party, or upon stipulation of the parties to the
10 several appeals. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-
11 43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp:
12 HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County
13 Charter §§8-8.4, 13-2(15))

14
15 **§12-203-21 Service of the notice of appeal.** If the appellant is
16 someone other than the applicant, appellant shall serve a file-marked copy
17 of the appeal by mail or delivery thereof to counsel of record for each other
18 party, or, if a party is not represented by counsel, to the party at the party's
19 last known address. Proof of service shall be filed with the department
20 within seven days after the filing of the notice of appeal. [Eff 11/27/03]
21 (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui
22 County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5,
23 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

24
25 **§12-203-22 Payment of fees.** Upon the filing of any separate or
26 joint notice of appeal, the appellant shall pay such fees as are set forth in
27 the County budget ordinance. [Eff 11/27/03] (Auth: HRS §§205A-43,
28 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4,
29 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-
30 49, Maui County Charter §§8-8.4, 13-2(15))

31
32 **§12-203-23 Contested case hearing on appeal.** The commission
33 shall hold a contested case hearing on the appeal. The director, the
34 appellant, and, where the appellant is someone other than the applicant,
35 the applicant shall be parties to the proceedings. Subchapters 3, 4, and
36 5 of chapter 12-201 of the rules of practice and procedure for the Maui
37 planning commission, relating to petitions to intervene, contested case
38 procedures, and [post hearing] post-hearing procedures, respectively,

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

8
9 **§12-203-24 Disposition of appeal.** The commission may affirm the
10 decision of the director, or may reverse or vacate and remand the decision
11 of the director if the substantial rights of the petitioner may have been
12 prejudiced because the decision is:

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

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

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

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