
A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 46-6.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) Each county shall adopt ordinances [~~which~~] that shall
4 require a subdivider or developer, as a condition precedent to
5 final approval of a subdivision, in cases where public access is
6 not already provided, to dedicate land for public access by
7 right-of-way or easement for pedestrian travel from a public
8 highway or public streets to the land below the high-water mark
9 on any coastal shoreline, and to dedicate land for public access
10 by right of way from a public highway to areas in the mountains
11 where there are existing facilities for hiking, hunting, fruit-
12 picking, ti-leaf sliding, gathering, and other recreational and
13 cultural purposes, and where there are existing mountain
14 trails[-]; provided that the county shall ensure reasonable
15 street parking near public access areas in the special
16 management area under chapter 205A."

17 SECTION 2. Section 205A-2, Hawaii Revised Statutes, is
18 amended to read as follows:



1 "§205A-2 Coastal zone management program; objectives and
2 policies. (a) The objectives and policies in this section
3 shall apply to all parts of this chapter.

4 (b) Objectives.

5 (1) Recreational resources;

6 (A) Provide coastal recreational opportunities
7 accessible to the public.

8 (2) Historic resources;

9 (A) Protect, preserve, and, where desirable, restore
10 those natural and manmade historic and
11 prehistoric resources in the coastal zone
12 management area that are significant in Hawaiian
13 and American history and culture.

14 (3) Scenic and open space resources;

15 (A) Protect, preserve, and, where desirable, restore
16 or improve the quality of coastal scenic and open
17 space resources.

18 (4) Coastal ecosystems;

19 (A) Protect valuable coastal ecosystems, including
20 reefs, from disruption and minimize adverse
21 impacts on all coastal ecosystems.

22 (5) Economic uses;



1 (A) Provide public or private facilities and
2 improvements important to the State's economy in
3 suitable locations.

4 (6) Coastal hazards;

5 (A) Reduce hazard to life and property from coastal
6 hazards, including but not limited to tsunami,
7 hurricanes, wind, storm waves, [~~stream~~] flooding,
8 erosion, sea-level rise, subsidence, and
9 pollution.

10 (7) Managing development;

11 (A) Improve the development review process,
12 communication, and public participation in the
13 management and planning of coastal resources and
14 hazards.

15 (8) Public participation;

16 (A) Stimulate public awareness, education, and
17 participation in coastal management.

18 (9) Beach protection;

19 (A) Protect beaches and coastal dunes for public use
20 and recreation[-], and as natural barriers to
21 coastal hazards.

22 (10) Marine resources;



1 (A) Promote the protection, use, and development of
2 marine and coastal resources to assure their
3 sustainability.

4 (c) Policies.

5 (1) Recreational resources;

6 (A) Improve coordination and funding of coastal
7 recreational planning and management; and

8 (B) Provide adequate, accessible, and diverse
9 recreational opportunities in the coastal zone
10 management area for the general public by:

11 (i) Protecting coastal resources uniquely suited
12 for recreational activities that cannot be
13 provided in other areas;

14 (ii) Requiring repair or replacement of coastal
15 resources having significant recreational
16 value, including [] but not limited to []
17 coral reefs, surfing sites, fishponds, and
18 sand beaches, when [~~such~~] those resources
19 will be unavoidably damaged by development;
20 or requiring reasonable monetary
21 compensation to the State for recreation



- 1 when repair or replacement is not feasible
2 or desirable;
- 3 (iii) Providing and managing adequate public
4 access, consistent with conservation of
5 natural resources, to and along all
6 shorelines [~~with recreational value~~];
- 7 (iv) Providing an adequate supply of shoreline
8 parks and other recreational facilities
9 suitable for public recreation;
- 10 (v) Ensuring public recreational uses of county,
11 state, and federally owned or controlled
12 shoreline lands and waters having
13 recreational value consistent with public
14 safety standards and conservation of natural
15 resources;
- 16 (vi) Adopting water quality standards and
17 regulating point and nonpoint sources of
18 pollution to protect, and where feasible,
19 restore the recreational value of coastal
20 waters;
- 21 (vii) Developing new shoreline recreational
22 opportunities, where appropriate, [~~such as~~]



1 including artificial lagoons, artificial
2 beaches, and artificial reefs for surfing
3 and fishing; and

4 (viii) Encouraging reasonable dedication of
5 shoreline areas with recreational value for
6 public use as part of discretionary
7 approvals or permits by the land use
8 commission, board of land and natural
9 resources, and county authorities; and
10 crediting [~~such~~] any dedication against the
11 requirements of section 46-6.

12 (2) Historic resources;

13 (A) Identify and analyze significant archaeological
14 resources;

15 (B) Maximize information retention through
16 preservation of remains and artifacts or salvage
17 operations; and

18 (C) Support state goals for protection, restoration,
19 interpretation, and display of historic
20 resources.

21 (3) Scenic and open space resources;



- 1 (A) Identify valued scenic resources in the coastal
2 zone management area;
- 3 (B) Ensure that new developments are compatible with
4 their visual environment by designing and
5 locating [~~such~~] the developments to minimize the
6 alteration of natural landforms and existing
7 public views to and along the shoreline;
- 8 (C) Preserve, maintain, and, where desirable, improve
9 and restore shoreline open space, public access,
10 and scenic resources; and
- 11 (D) Encourage those developments that are not coastal
12 dependent to locate in inland areas.
- 13 (4) Coastal ecosystems;
- 14 (A) Exercise an overall conservation ethic, and
15 practice stewardship in the protection, use, and
16 development of marine and coastal resources;
- 17 (B) Improve the technical basis for natural resource
18 management;
- 19 (C) Preserve valuable coastal ecosystems, including
20 reefs, of significant biological or economic
21 importance;



1 (D) Minimize disruption or degradation of coastal
2 water ecosystems by effective regulation of
3 stream diversions, channelization, and similar
4 land and water uses, recognizing competing water
5 needs; and

6 (E) Promote water quantity and quality planning and
7 management practices that reflect the tolerance
8 of fresh water and marine ecosystems and maintain
9 and enhance water quality through the development
10 and implementation of point and nonpoint source
11 water pollution control measures.

12 (5) Economic uses;

13 (A) Concentrate coastal dependent development in
14 appropriate areas;

15 (B) Ensure that coastal dependent development [~~such~~
16 ~~as~~ including, but not limited to harbors and
17 ports, and coastal related development such as
18 visitor industry facilities and energy generating
19 facilities, are located, designed, and
20 constructed to minimize adverse social, visual,
21 and environmental impacts in the coastal zone
22 management area; and



1 (C) Direct the location and expansion of coastal
2 dependent developments to areas presently
3 designated and used for [~~such~~] the developments
4 and permit reasonable long-term growth at [~~such~~]
5 those areas, and permit coastal dependent
6 development outside of presently designated areas
7 when:

- 8 (i) Use of presently designated locations is not
9 feasible;
- 10 (ii) Adverse environmental effects are minimized;
11 and
- 12 (iii) The development is important to the State's
13 [~~economy.~~] infrastructure and utilities.

14 (6) Coastal hazards;

15 (A) Develop and communicate adequate information
16 about [~~storm wave,~~] tsunami, [~~flood,~~] hurricanes,
17 wind, storm waves, flooding, erosion, sea-level
18 rise, subsidence, and point and nonpoint source
19 pollution hazards;

20 (B) [~~Control~~] Engage in early planning and control
21 development in areas subject to [~~storm wave,~~]
22 tsunami, [~~flood,~~] hurricanes, wind, storm waves,



- 1 flooding, erosion, sea-level rise, subsidence,
2 and point and nonpoint source pollution hazards;
- 3 (C) Ensure that developments comply with requirements
4 of the [~~Federal~~] National Flood Insurance
5 Program; and
- 6 (D) Prevent coastal flooding from inland projects.
- 7 (7) Managing development;
- 8 (A) Use, implement, and enforce existing law
9 effectively to the maximum extent possible in
10 managing and planning for present and future
11 coastal zone development;
- 12 (B) Facilitate timely processing of applications for
13 development permits and resolve overlapping or
14 conflicting permit requirements; and
- 15 (C) Communicate the potential short and long-term
16 impacts of proposed significant coastal
17 developments early in their life cycle and in
18 terms understandable to the public to facilitate
19 public participation in the planning and review
20 process.
- 21 (8) Public participation;



- 1 (A) Promote public involvement in coastal zone
- 2 management processes;
- 3 (B) Disseminate information on coastal management
- 4 issues by means of educational materials,
- 5 published reports, staff contact, and public
- 6 workshops for persons and organizations concerned
- 7 with coastal issues, developments, and government
- 8 activities; and
- 9 (C) Organize workshops, policy dialogues, and site-
- 10 specific mediations to respond to coastal issues
- 11 and conflicts.
- 12 (9) Beach protection;
- 13 (A) Locate new structures inland from the shoreline
- 14 setback to conserve open space, minimize
- 15 interference with natural shoreline processes,
- 16 and minimize loss of improvements due to erosion;
- 17 (B) Prohibit construction of private erosion-
- 18 protection structures seaward of the shoreline,
- 19 except when they result in improved aesthetic and
- 20 engineering solutions to erosion at the sites and
- 21 do not interfere with existing recreational and
- 22 waterline activities; and



1 (C) Minimize the construction of public erosion-
2 protection structures seaward of the shoreline.

3 (10) Marine resources;

4 (A) Ensure that the use and development of marine and
5 coastal resources are ecologically and
6 environmentally sound and economically
7 beneficial;

8 (B) Coordinate the management of marine and coastal
9 resources and activities to improve effectiveness
10 and efficiency;

11 (C) Assert and articulate the interests of the State
12 as a partner with federal agencies in the sound
13 management of ocean resources within the United
14 States exclusive economic zone;

15 (D) Promote research, study, and understanding of
16 ocean processes, marine life, and other ocean
17 resources in order to acquire and inventory
18 information necessary to understand how ocean
19 development activities relate to and impact upon
20 ocean and coastal resources; and



1 (E) Encourage research and development of new,
2 innovative technologies for exploring, using, or
3 protecting marine and coastal resources."

4 SECTION 3. Section 205A-22, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending the definitions of "department" and
7 "development" to read:

8 ""Department" means the planning department in the counties
9 of Kauai, Maui, and Hawaii, and the department of [~~land~~
10 ~~utilization~~] planning and permitting in the city and county of
11 Honolulu, or other appropriate agency as designated by the
12 county councils.

13 "Development" [~~means~~]:

14 (1) Means any of the uses, activities, or operations on
15 land or in or under water within a special management
16 area that are included below:

17 [~~(1)~~] (A) Placement or erection of any solid material or
18 any gaseous, liquid, solid, or thermal waste;

19 [~~(2)~~] (B) Grading, removing, dredging, mining, or
20 extraction of any materials;



1 thereafter qualify for this exception with
2 respect to any subsequent subdivision of any of
3 the resulting parcels;

4 ~~[(13)]~~ (M) Installation of underground utility lines and
5 appurtenant aboveground fixtures less than four
6 feet in height along existing corridors;

7 ~~[(14)]~~ (N) Structural and nonstructural improvements to
8 existing single-family residences, where
9 otherwise permissible;

10 ~~[(15)]~~ (O) Nonstructural improvements to existing commercial
11 structures; and

12 ~~[(16)]~~ (P) Construction, installation, maintenance, repair,
13 and replacement of civil defense warning or
14 signal devices and sirens;

15 provided that whenever the authority finds that any excluded
16 use, activity, or operation may have a cumulative impact, or a
17 significant environmental or ecological effect on a special
18 management area, that use, activity, or operation shall be
19 defined as "development" for the purpose of this part."

20 2. By amending the definition of "special management area
21 emergency permit" to read:



1 ""Special management area emergency permit" means an action
2 by the authority authorizing development in cases of emergency
3 requiring immediate action to prevent substantial physical harm
4 to persons or property or to allow the reconstruction of
5 structures damaged by natural hazards to their original form;
6 provided that [~~such~~] the structures were previously found to be
7 legal and in compliance with requirements of the [~~Federal~~
8 National Flood Insurance Program."

9 3. By amending the definition of "structure" to read:

10 ""Structure" includes but is not limited to any building,
11 road, pipe, flume, conduit, siphon, aqueduct, telephone line,
12 [~~and~~] electrical power transmission and distribution line[~~-~~],
13 wall, revetment, and groin."

14 SECTION 4. Section 205A-26, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§205A-26 Special management area guidelines.** In
17 implementing this part, the authority shall adopt the following
18 guidelines for the review of developments proposed in the
19 special management area:

20 (1) All development in the special management area shall
21 be subject to reasonable terms and conditions set by
22 the authority [~~in order~~] to ensure:



- 1 (A) Adequate public access, by dedication or other
2 means, to and along the publicly owned or used
3 beaches, recreation areas, and natural reserves
4 is provided to the extent consistent with sound
5 conservation principles;
- 6 (B) Adequate and properly located public recreation
7 areas and wildlife preserves are reserved;
- 8 (C) Provisions are made for solid and liquid waste
9 treatment, disposition, and management [~~which~~
10 that will minimize adverse effects upon special
11 management area resources; and
- 12 (D) Alterations to existing land forms and
13 vegetation, except crops, and construction of
14 structures shall cause minimum adverse effect to
15 water resources and scenic and recreational
16 amenities and minimum danger of floods, wind
17 damage, wave damage, storm surge, landslides,
18 erosion, sea-level rise, siltation, or failure in
19 the event of earthquake[-];
- 20 (2) No development shall be approved unless the authority
21 has first found:



- 1 (A) That the development will not have any
2 ~~[substantial]~~ significant adverse environmental
3 or ecological effect, except as ~~[such]~~ any
4 adverse effect is minimized to the extent
5 practicable and clearly outweighed by public
6 health, safety, or compelling public interests.
7 ~~[Such]~~ These adverse effects shall include~~[r]~~ but
8 not be limited to~~[r]~~ the potential cumulative
9 impact of individual developments, each one of
10 which taken in itself might not have a
11 ~~[substantial]~~ significant adverse effect, and the
12 elimination of planning options;
- 13 (B) That the development is consistent with the
14 objectives, policies, and special management area
15 guidelines of this chapter and any guidelines
16 enacted by the legislature; ~~[and]~~
- 17 (C) That the development is consistent with the
18 county general plan and zoning. ~~[Such a]~~ A
19 finding of consistency does not preclude
20 concurrent processing where a general plan or
21 zoning amendment may also be required~~[r]~~;



1 (D) That the development has been adequately planned
2 to minimize the risk from coastal hazards such as
3 tsunami, hurricanes, wind, storm waves, flooding,
4 erosion, sea-level rise, subsidence, and
5 pollution; and

6 (E) That the development does not impede public
7 access to the shoreline or beach area; and

8 (3) The authority shall seek to minimize, where
9 reasonable:

10 (A) Dredging, filling, or otherwise altering any bay,
11 estuary, salt marsh, river mouth, slough, or
12 lagoon;

13 (B) Any development ~~which~~ that would reduce the
14 size of any beach or other area usable for public
15 recreation;

16 (C) Any development ~~which~~ that would reduce or
17 impose restrictions upon public access to tidal
18 and submerged lands, beaches, portions of rivers
19 and streams within the special management areas,
20 and the mean high tide line where there is no
21 beach;



1 (D) Any development [~~which~~] that would substantially
2 interfere with or detract from the line of sight
3 toward the sea from the state highway nearest the
4 coast; and

5 (E) Any development [~~which~~] that would adversely
6 affect water quality, existing areas of open
7 water free of visible structures, existing and
8 potential fisheries and fishing grounds, wildlife
9 habitats, or potential or existing agricultural
10 uses of land."

11 SECTION 5. Section 205A-43, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§205A-43 Establishment of shoreline setbacks and duties**
14 **and powers of the department.** (a) Setbacks along shorelines
15 are established of not less than [~~twenty feet and not more than~~]
16 forty feet inland from the shoreline. The department shall
17 adopt rules pursuant to chapter 91, prescribing procedures for
18 determining the shoreline setback line, and shall enforce the
19 shoreline setbacks and rules pertaining thereto.

20 (b) The powers and duties of the department shall
21 include[7] but not be limited to[÷



1 ~~(1) The department shall adopt rules under chapter 91~~
2 ~~prescribing procedures for determining the shoreline~~
3 ~~setback line; and~~

4 ~~(2) The department shall review]~~ reviewing the plans of
5 all applicants who propose any structure, activity, or
6 facility that would be prohibited without a variance
7 pursuant to this part. The department may require
8 that the plans be supplemented by accurately mapped
9 data and photographs showing natural conditions and
10 topography relating to all existing and proposed
11 structures and activities."

12 SECTION 6. Section 205A-43.5, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Prior to action on a variance application, the
15 authority shall hold a public hearing under chapter 91. By
16 adoption of rules under chapter 91, the authority may delegate
17 responsibility to the department. Public and private notice,
18 including reasonable notice to abutting property owners and
19 persons who have requested this notice, shall be provided, but a
20 public hearing may be waived prior to action on a variance
21 application for:



- 1 (1) Stabilization of shoreline erosion by the moving of
- 2 sand entirely on public lands;
- 3 (2) Protection of a legal structure costing more than
- 4 [~~\$20,000;~~] \$50,000; provided the structure is at risk
- 5 of immediate damage from shoreline erosion;
- 6 (3) Other structures or activities; provided that no
- 7 person or agency has requested a public hearing within
- 8 twenty-five calendar days after public notice of the
- 9 application; [~~or~~]
- 10 (4) Temporary emergency protection of a legal inhabited
- 11 dwelling; provided the structure is at risk of
- 12 immediate damage from shoreline erosion or other
- 13 coastal hazard; or
- 14 [~~(4)~~] (5) Maintenance, repair, reconstruction, and minor
- 15 additions or alterations of legal boating, maritime,
- 16 or watersports recreational facilities, [~~which~~] that
- 17 result in little or no interference with natural
- 18 shoreline processes."

19 SECTION 7. Section 205A-45, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 **"§205A-45 Shoreline setback lines established by county.**

22 (a) The several counties through rules adopted pursuant to



1 chapter 91 or ordinance may require that shoreline setback lines
2 be established at [~~distances greater than that established in~~
3 ~~this part.~~] a distance not less than the average annual
4 shoreline erosion rate based on a minimum of a fifty-year
5 projection, in addition to the minimum distance established in
6 section 205A-43.

7 (b) The several counties through rules adopted pursuant to
8 chapter 91 or ordinance may expand the shoreline area to include
9 the area between mean sea level and the shoreline.

10 (c) The several counties, through rules adopted pursuant
11 to chapter 91, or ordinance, or under existing authority, shall
12 use the shoreline setback as a tool to minimize the damage from
13 coastal hazards, including but not limited to tsunami,
14 hurricanes, wind, storm waves, flooding, erosion, sea-level
15 rise, subsidence, and pollution. Measures including early
16 planning, variances for innovative design, and minimum buildable
17 areas shall be considered.

18 (d) The several counties, through rules adopted pursuant
19 to chapter 91, or ordinance, or under existing authority, shall
20 ensure that:

21 (1) Any parcels created after the subdivision of an
22 original parcel are sufficiently large to accommodate



1 a shoreline setback based on average annual erosion
2 rate; and
3 (2) Public safety, public access, and public shoreline
4 areas are protected."

5 SECTION 8. Section 205A-46, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§205A-46 Variances.** (a) A variance may be granted for a
8 structure or activity otherwise prohibited in this part if the
9 authority finds in writing, based on the record presented, that
10 the proposed structure or activity is necessary for or ancillary
11 to:

- 12 (1) Cultivation of crops;
- 13 (2) Aquaculture;
- 14 (3) Landscaping; provided that the authority finds that
15 the proposed structure or activity will not adversely
16 affect beach processes and will not artificially fix
17 the shoreline;
- 18 (4) Drainage;
- 19 (5) Boating, maritime, or watersports recreational
20 facilities;
- 21 (6) Facilities or improvements by public agencies or
22 public utilities regulated under chapter 269;



1 (7) Private facilities or improvements that are clearly in
2 the public interest;

3 (8) Private facilities or improvements [~~which will neither~~
4 ~~adversely affect beach processes nor artificially fix~~
5 ~~the shoreline~~]; provided that the authority also finds
6 that hardship will result to the applicant if the
7 facilities or improvements are not allowed within the
8 shoreline area;

9 [~~(9) Private facilities or improvements that may~~
10 ~~artificially fix the shoreline; provided that the~~
11 ~~authority also finds that shoreline erosion is likely~~
12 ~~to cause hardship to the applicant if the facilities~~
13 ~~or improvements are not allowed within the shoreline~~
14 ~~area, and the authority imposes conditions to prohibit~~
15 ~~any structure seaward of the existing shoreline unless~~
16 ~~it is clearly in the public interest;~~] or

17 [~~(10)~~] (9) Moving of sand from one location seaward of the
18 shoreline to another location seaward of the
19 shoreline~~[+]~~ within adjacent areas; provided that the
20 authority also finds that moving of sand [~~will not~~
21 ~~adversely affect beach processes,~~] will not diminish



1 the size of a public beach[7] and will be necessary to
2 stabilize an eroding shoreline.

3 (b) A variance may be granted for private facilities or
4 improvements that may artificially fix the shoreline; provided
5 that:

6 (1) The authority also finds that shoreline erosion is
7 likely to cause hardship to the applicant if the
8 facilities or improvements are not allowed within the
9 shoreline area, and the authority imposes conditions
10 to prohibit any structure seaward of the existing
11 shoreline unless it is clearly in the public interest;
12 and

13 (2) Any structure or improvement does not limit or
14 severely reduce public access or public shoreline use.

15 [~~b~~] (c) Hardship shall be defined in rules adopted by
16 the authority under chapter 91. Hardship shall not be
17 determined as a result of county zoning changes, planned
18 development permits, cluster permits, or subdivision approvals
19 after June 16, 1989, or as a result of any other permit or
20 approval listed in rules adopted by the authority.

21 [~~e~~] (d) No variance shall be granted unless appropriate
22 conditions are imposed:



- 1 (1) To maintain safe lateral access to and along the
- 2 shoreline or adequately compensate for its loss;
- 3 (2) To minimize risk of adverse impacts on beach
- 4 processes;
- 5 (3) To minimize risk of structures failing and becoming
- 6 loose rocks or rubble on public property; and
- 7 (4) To minimize adverse impacts on public views to, from,
- 8 and along the shoreline."

9 SECTION 9. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun, before its effective date.

12 SECTION 10. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 11. This Act shall take effect upon its approval.

15

INTRODUCED BY: Cindy Evans

JAN 16 2008



Report Title:

Coastal Zone Management

Description:

Requires affected agencies to account for sea-level rise and minimize risks from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis. Preserves public access and public shoreline access. Extends shoreline setback to not less than 40 feet inland from the shoreline and requires counties to account for annual erosion rates.

