
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 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, and other recreational purposes, and
13 where there are existing mountain trails[-]; provided that the
14 county shall ensure reasonable street parking near public access
15 areas in the special management area under chapter 205A."

16 SECTION 2. Section 205A-2, Hawaii Revised Statutes, is
17 amended by amending subsections (b) and (c) to read as follows:

18 "(b) Objectives.



- 1 (1) Recreational resources;
- 2 (A) Provide coastal recreational opportunities
- 3 accessible to the public.
- 4 (2) Historic resources;
- 5 (A) Protect, preserve, and, where desirable, restore
- 6 those natural and manmade historic and
- 7 prehistoric resources in the coastal zone
- 8 management area that are significant in Hawaiian
- 9 and American history and culture.
- 10 (3) Scenic and open space resources;
- 11 (A) Protect, preserve, and, where desirable, restore
- 12 or improve the quality of coastal scenic and open
- 13 space resources.
- 14 (4) Coastal ecosystems;
- 15 (A) Protect valuable coastal ecosystems, including
- 16 reefs, from disruption and minimize adverse
- 17 impacts on all coastal ecosystems.
- 18 (5) Economic uses;
- 19 (A) Provide public or private facilities and
- 20 improvements important to the State's economy in
- 21 suitable locations.
- 22 (6) Coastal hazards;



1 (A) Reduce hazard to life and property from coastal
2 hazards, including but not limited to tsunami,
3 hurricanes, wind, storm waves, [stream] flooding,
4 erosion, sea-level rise, subsidence, and
5 pollution.

6 (7) Managing development;

7 (A) Improve the development review process,
8 communication, and public participation in the
9 management and planning of coastal resources and
10 hazards.

11 (8) Public participation;

12 (A) Stimulate public awareness, education, and
13 participation in coastal management.

14 (9) Beach protection;

15 (A) Protect beaches and coastal dunes for public use
16 and recreation[-] and as natural barriers to
17 coastal hazards.

18 (10) Marine resources;

19 (A) Promote the protection, use, and development of
20 marine and coastal resources to assure their
21 sustainability.

22 (c) Policies.



- 1 (1) Recreational resources;
- 2 (A) Improve coordination and funding of coastal
- 3 recreational planning and management; and
- 4 (B) Provide adequate, accessible, and diverse
- 5 recreational opportunities in the coastal zone
- 6 management area for the general public by:
- 7 (i) Protecting coastal resources uniquely suited
- 8 for recreational activities that cannot be
- 9 provided in other areas;
- 10 (ii) Requiring repair or replacement of coastal
- 11 resources having significant recreational
- 12 value, including [7] but not limited to [7]
- 13 coral reefs, surfing sites, fishponds, and
- 14 sand beaches, when such resources will be
- 15 unavoidably damaged by development; or
- 16 requiring reasonable monetary compensation
- 17 to the State for recreation when repair or
- 18 replacement is not feasible or desirable;
- 19 (iii) Providing and managing adequate public
- 20 access, consistent with conservation of
- 21 natural resources, to and along all
- 22 shorelines [~~with recreational value~~];



- 1 (iv) Providing an adequate supply of shoreline
2 parks and other recreational facilities
3 suitable for public recreation;
- 4 (v) Ensuring public recreational uses of county,
5 state, and federally owned or controlled
6 shoreline lands and waters having
7 recreational value consistent with public
8 safety standards and conservation of natural
9 resources;
- 10 (vi) Adopting water quality standards and
11 regulating point and nonpoint sources of
12 pollution to protect, and where feasible,
13 restore the recreational value of coastal
14 waters;
- 15 (vii) Developing new shoreline recreational
16 opportunities, where appropriate, such as
17 artificial lagoons, artificial beaches, and
18 artificial reefs for surfing and fishing;
19 and
- 20 (viii) Encouraging reasonable dedication of
21 shoreline areas with recreational value for
22 public use as part of discretionary



1 approvals or permits by the land use
2 commission, board of land and natural
3 resources, and county authorities; and
4 crediting such dedication against the
5 requirements of section 46-6.

6 (2) Historic resources;

7 (A) Identify and analyze significant archaeological
8 resources;

9 (B) Maximize information retention through
10 preservation of remains and artifacts or salvage
11 operations; and

12 (C) Support state goals for protection, restoration,
13 interpretation, and display of historic
14 resources.

15 (3) Scenic and open space resources;

16 (A) Identify valued scenic resources in the coastal
17 zone management area;

18 (B) Ensure that new developments are compatible with
19 their visual environment by designing and
20 locating such developments to minimize the
21 alteration of natural landforms and existing
22 public views to and along the shoreline;



1 (C) Preserve, maintain, and, where desirable, improve
2 and restore shoreline open space, public access,
3 and scenic resources; and

4 (D) Encourage those developments that are not coastal
5 dependent to locate in inland areas.

6 (4) Coastal ecosystems;

7 (A) Exercise an overall conservation ethic, and
8 practice stewardship in the protection, use, and
9 development of marine and coastal resources;

10 (B) Improve the technical basis for natural resource
11 management;

12 (C) Preserve valuable coastal ecosystems, including
13 reefs, of significant biological or economic
14 importance;

15 (D) Minimize disruption or degradation of coastal
16 water ecosystems by effective regulation of
17 stream diversions, channelization, and similar
18 land and water uses, recognizing competing water
19 needs; and

20 (E) Promote water quantity and quality planning and
21 management practices that reflect the tolerance
22 of fresh water and marine ecosystems and maintain



1 and enhance water quality through the development
2 and implementation of point and nonpoint source
3 water pollution control measures.

4 (5) Economic uses;

5 (A) Concentrate coastal dependent development in
6 appropriate areas;

7 (B) Ensure that coastal dependent development such as
8 harbors and ports, and coastal related
9 development such as visitor industry facilities
10 and energy generating facilities, are located,
11 designed, and constructed to minimize adverse
12 social, visual, and environmental impacts in the
13 coastal zone management area; and

14 (C) Direct the location and expansion of coastal
15 dependent developments to areas presently
16 designated and used for such developments and
17 permit reasonable long-term growth at such areas,
18 and permit coastal dependent development outside
19 of presently designated areas when:

20 (i) Use of presently designated locations is not
21 feasible;



- 1 managing and planning for present and future
2 coastal zone development;
- 3 (B) Facilitate timely processing of applications for
4 development permits and resolve overlapping or
5 conflicting permit requirements; and
- 6 (C) Communicate the potential short and long-term
7 impacts of proposed significant coastal
8 developments early in their life cycle and in
9 terms understandable to the public to facilitate
10 public participation in the planning and review
11 process.
- 12 (8) Public participation;
- 13 (A) Promote public involvement in coastal zone
14 management processes;
- 15 (B) Disseminate information on coastal management
16 issues by means of educational materials,
17 published reports, staff contact, and public
18 workshops for persons and organizations concerned
19 with coastal issues, developments, and government
20 activities; and



1 (C) Organize workshops, policy dialogues, and site-
2 specific mediations to respond to coastal issues
3 and conflicts.

4 (9) Beach protection;

5 (A) Locate new structures inland from the shoreline
6 setback to conserve open space, minimize
7 interference with natural shoreline processes,
8 and minimize loss of improvements due to erosion;

9 (B) Prohibit construction of private erosion-
10 protection structures seaward of the shoreline,
11 except when they result in improved aesthetic and
12 engineering solutions to erosion at the sites and
13 do not interfere with existing recreational and
14 waterline activities; and

15 (C) Minimize the construction of public erosion-
16 protection structures seaward of the shoreline.

17 (10) Marine resources;

18 (A) Ensure that the use and development of marine and
19 coastal resources are ecologically and
20 environmentally sound and economically
21 beneficial;



1 (B) Coordinate the management of marine and coastal
2 resources and activities to improve effectiveness
3 and efficiency;

4 (C) Assert and articulate the interests of the State
5 as a partner with federal agencies in the sound
6 management of ocean resources within the United
7 States exclusive economic zone;

8 (D) Promote research, study, and understanding of
9 ocean processes, marine life, and other ocean
10 resources in order to acquire and inventory
11 information necessary to understand how ocean
12 development activities relate to and impact upon
13 ocean and coastal resources; and

14 (E) Encourage research and development of new,
15 innovative technologies for exploring, using, or
16 protecting marine and coastal resources."

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

19 1. By amending the definitions of "department" and
20 "development" to read as follows:

21 ""Department" means the planning department in the counties
22 of Kauai, Maui, and Hawaii, and the department of [~~land~~



1 ~~utilization]~~ planning and permitting in the city and county of
2 Honolulu, or other appropriate agency as designated by the
3 county councils.

4 "Development" means any of the uses, activities, or
5 operations on land or in or under water within a special
6 management area that are included below:

- 7 (1) Placement or erection of any solid material or any
8 gaseous, liquid, solid, or thermal waste;
- 9 (2) Grading, removing, dredging, mining, or extraction of
10 any materials;
- 11 (3) Change in the density or intensity of use of land,
12 including but not limited to the division or
13 subdivision of land;
- 14 (4) Change in the intensity of use of water, ecology
15 related thereto, or of access thereto; and
- 16 (5) Construction, reconstruction, [~~demolition,~~] or
17 alteration of the size, shape, footprint, or area of
18 any structure.

19 "Development" does not include the following:

- 20 (1) Construction of a single-family residence that is not
21 part of a larger development;



- 1 (2) Repair or maintenance of roads and highways within
- 2 existing rights-of-way;
- 3 (3) Routine maintenance dredging of existing streams,
- 4 channels, and drainage ways;
- 5 (4) Repair and maintenance of underground utility lines,
- 6 including but not limited to water, sewer, power, and
- 7 telephone and minor appurtenant structures such as pad
- 8 mounted transformers and sewer pump stations;
- 9 (5) Zoning variances, except for height, density, parking,
- 10 and shoreline setback;
- 11 (6) Repair, maintenance, or interior alterations to
- 12 existing structures;
- 13 (7) Demolition or removal of structures, except those
- 14 structures located on any historic site as designated
- 15 in national or state registers;
- 16 (8) Use of any land for the purpose of cultivating,
- 17 planting, growing, and harvesting plants, crops,
- 18 trees, and other agricultural, horticultural, or
- 19 forestry products or animal husbandry, or aquaculture
- 20 or mariculture of plants or animals, or other
- 21 agricultural purposes;
- 22 (9) Transfer of title to land;



- 1 (10) Creation or termination of easements, covenants, or
- 2 other rights in structures or land;
- 3 (11) Subdivision of land into lots greater than twenty
- 4 acres in size;
- 5 (12) Subdivision of a parcel of land into four or fewer
- 6 parcels when no associated construction activities are
- 7 proposed; provided that any land which is so
- 8 subdivided shall not thereafter qualify for this
- 9 exception with respect to any subsequent subdivision
- 10 of any of the resulting parcels;
- 11 (13) Installation of underground utility lines and
- 12 appurtenant aboveground fixtures less than four feet
- 13 in height along existing corridors;
- 14 (14) Structural and nonstructural improvements to existing
- 15 single-family residences, where otherwise permissible;
- 16 (15) Nonstructural improvements to existing commercial
- 17 structures; and
- 18 (16) Construction, installation, maintenance, repair, and
- 19 replacement of civil defense warning or signal devices
- 20 and sirens;

21 provided that whenever the authority finds that any excluded
22 use, activity, or operation may have a cumulative impact, or a



1 significant environmental or ecological effect on a special
2 management area, that use, activity, or operation shall be
3 defined as "development" for the purpose of this part."

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

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

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

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

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

21 "**§205A-26 Special management area guidelines.** In
22 implementing this part, the authority shall adopt the following



1 guidelines for the review of developments proposed in the
2 special management area:

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

6 (A) Adequate public access, by dedication or other
7 means, to and along the publicly owned or used
8 beaches, recreation areas, and natural reserves
9 are provided to the extent consistent with sound
10 conservation principles;

11 (B) Adequate and properly located public recreation
12 areas and wildlife preserves are reserved;

13 (C) Provisions are made for solid and liquid waste
14 treatment, disposition, and management which will
15 minimize adverse effects upon special management
16 area resources; and

17 (D) Alterations to existing land forms and
18 vegetation, except crops, and construction of
19 structures shall cause minimum adverse effect to
20 water resources and scenic and recreational
21 amenities and minimum danger of floods, wind
22 damage, wave damage, storm surge, landslides,



1 erosion, sea-level rise, siltation, or failure in
2 the event of earthquake[-];

3 (2) No development shall be approved unless the authority
4 has first found:

5 (A) That the development will not have any
6 [~~substantial~~] significant adverse environmental
7 or ecological effect, except as such adverse
8 effect is minimized to the extent practicable and
9 clearly outweighed by public health, safety, or
10 compelling public interests. Such adverse
11 effects shall include[-] but not be limited to[-]
12 the potential cumulative impact of individual
13 developments, each one of which taken in itself
14 might not have a [~~substantial~~] significant
15 adverse effect, and the elimination of planning
16 options;

17 (B) That the development is consistent with the
18 objectives, policies, and special management area
19 guidelines of this chapter and any guidelines
20 enacted by the legislature; [~~and~~]

21 (C) That the development is consistent with the
22 county general plan and zoning. Such a finding



1 of consistency does not preclude concurrent
2 processing where a general plan or zoning
3 amendment may also be required[-];

4 (D) That the development has been adequately planned
5 to minimize the risk from coastal hazards such as
6 tsunamis, hurricanes, wind, storm waves,
7 flooding, erosion, and sea-level rise; and

8 (E) That the development does not impede public
9 access to the shoreline or beach area;

10 and

11 (3) The authority shall seek to minimize, where
12 reasonable:

13 (A) Dredging, filling, or otherwise altering any bay,
14 estuary, salt marsh, river mouth, slough, or
15 lagoon;

16 (B) Any development which would reduce the size of
17 any beach or other area usable for public
18 recreation;

19 (C) Any development which would reduce or impose
20 restrictions upon public access to tidal and
21 submerged lands, beaches, portions of rivers and



- 1 streams within the special management areas, and
2 the mean high tide line where there is no beach;
- 3 (D) Any development which would substantially
4 interfere with or detract from the line of sight
5 toward the sea from the state highway nearest the
6 coast; and
- 7 (E) Any development which would adversely affect
8 water quality, existing areas of open water free
9 of visible structures, existing and potential
10 fisheries and fishing grounds, wildlife habitats,
11 or potential or existing agricultural uses of
12 land."

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

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



1 (b) The powers and duties of the department shall
2 include [7] but not be limited to [+

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

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

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

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



1 public hearing may be waived prior to action on a variance
2 application for:

3 (1) Stabilization of shoreline erosion by the moving of
4 sand entirely on public lands;

5 (2) Protection of a legal structure costing more than
6 [~~\$20,000,~~] \$50,000; provided the structure is at risk
7 of immediate damage from shoreline erosion;

8 (3) Other structures or activities; provided that no
9 person or agency has requested a public hearing within
10 twenty-five calendar days after public notice of the
11 application; [~~e~~]

12 (4) Temporary emergency protection of a legally inhabited
13 dwelling; provided that the structure is at risk of
14 immediate damage from shoreline erosion or other
15 coastal hazard; or

16 [~~(4)~~] (5) Maintenance, repair, reconstruction, and minor
17 additions or alterations of legal boating, maritime,
18 or watersports recreational facilities, which result
19 in little or no interference with natural shoreline
20 processes."

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



1 "§205A-45 Shoreline setback lines established by county.

2 (a) The several counties through rules adopted pursuant to
3 chapter 91 or ordinance [~~may~~] shall require that shoreline
4 setback lines be established at [~~distances greater than that~~
5 ~~established in this part.~~] a distance not less than the average
6 annual erosion rate based on a one hundred-year projection, in
7 addition to the minimum distance established in section 205A-43.

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

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

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



1 (1) Any parcels created after the subdivision of an
 2 original parcel are sufficiently large enough to
 3 accommodate a shoreline setback based on average
 4 annual erosion rate; and

5 (2) Public safety, public access, and public shoreline
 6 areas are protected."

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

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

- 14 (1) Cultivation of crops;
- 15 (2) Aquaculture;
- 16 (3) Landscaping; provided that the authority finds that
 17 the proposed structure or activity will not adversely
 18 affect beach processes and will not artificially fix
 19 the shoreline;
- 20 (4) Drainage;
- 21 (5) Boating, maritime, or watersports recreational
 22 facilities;



- 1 (6) Facilities or improvements by public agencies or
2 public utilities regulated under chapter 269;
- 3 (7) Private facilities or improvements that are clearly in
4 the public interest;
- 5 (8) Private facilities or improvements [~~which will neither~~
6 ~~adversely affect beach processes nor artificially fix~~
7 ~~the shoreline~~]; provided that the authority also finds
8 that hardship will result to the applicant if the
9 facilities or improvements are not allowed within the
10 shoreline area;
- 11 [~~(9) Private facilities or improvements that may~~
12 ~~artificially fix the shoreline; provided that the~~
13 ~~authority also finds that shoreline erosion is likely~~
14 ~~to cause hardship to the applicant if the facilities~~
15 ~~or improvements are not allowed within the shoreline~~
16 ~~area, and the authority imposes conditions to prohibit~~
17 ~~any structure seaward of the existing shoreline unless~~
18 ~~it is clearly in the public interest;~~] or
- 19 [~~(10)~~] (9) Moving of sand from one location seaward of the
20 shoreline to another location seaward of the
21 shoreline [~~+~~] within adjacent areas; provided that the
22 authority also finds that the moving of sand [~~will not~~



1 ~~adversely affect beach processes,~~ will not diminish
2 the size of a public beach~~[7]~~ and will be necessary to
3 stabilize an eroding shoreline.

4 (b) A variance may be granted for private facilities or
5 improvements that may artificially fix the shoreline; provided
6 that such facilities or improvements are clearly in the public
7 interest and the authority imposes conditions to prohibit any
8 structure seaward of the existing shoreline unless it is clearly
9 in the public interest; provided further that any structure or
10 improvement does not limit or severely reduce public access or
11 public shoreline use.

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

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

20 (1) To maintain safe lateral access to and along the
21 shoreline or adequately compensate for its loss;



- 1 (2) To minimize risk of adverse impacts on beach
- 2 processes;
- 3 (3) To minimize risk of structures failing and becoming
- 4 loose rocks or rubble on public property; and
- 5 (4) To minimize adverse impacts on public views to, from,
- 6 and along the shoreline."

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

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

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

13

INTRODUCED BY:

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Report Title:

Shoreline Setback

Description:

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

