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# 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 205A-26, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§205A-26 Special management area guidelines.** In  
4 implementing this part, the authority shall adopt the following  
5 guidelines for the review of developments proposed in the  
6 special management area:

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

10           (A) Adequate public access, by dedication or other  
11 means, to and along the publicly owned or used  
12 beaches, recreation areas, and natural reserves  
13 is provided to the extent consistent with sound  
14 conservation principles;

15           (B) Adequate and properly located public recreation  
16 areas and wildlife preserves are reserved;

17           (C) Provisions are made for solid and liquid waste  
18 treatment, disposition, and management [~~which~~]



1           that will minimize adverse effects upon special  
2           management area resources; and

3           (D) Alterations to existing land forms and  
4           vegetation, except crops, and construction of  
5           structures shall cause minimum adverse effect to  
6           water resources and scenic and recreational  
7           amenities and minimum danger of floods, wind  
8           damage, wave damage, storm surge, landslides,  
9           erosion, sea-level rise, siltation, or failure in  
10          the event of earthquake[-];

11          (2) No development shall be approved unless the authority  
12          has first found:

13          (A) That the development will not have any  
14          ~~[substantial]~~ significant adverse environmental  
15          or ecological effect, except as ~~[such]~~ the  
16          adverse effect is minimized to the extent  
17          practicable and clearly outweighed by public  
18          health, safety, or compelling public interests.  
19          ~~[Such]~~ Any adverse effects shall include[-] but  
20          not be limited to[-] the potential cumulative  
21          impact of individual developments, each one of  
22          which taken in itself might not have a



1           ~~[substantial]~~ significant adverse effect, and the  
2           elimination of planning options;

3           (B) That the development is consistent with the  
4           objectives, policies, and special management area  
5           guidelines of this chapter and any guidelines  
6           enacted by the legislature; ~~[and]~~

7           (C) That the development is consistent with the  
8           county general plan and zoning. ~~[Such a]~~ A  
9           finding of consistency does not preclude  
10          concurrent processing where a general plan or  
11          zoning amendment may also be required~~[-]~~;

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

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

18          and

19          (3) The authority shall seek to minimize, where  
20          reasonable:



- 1 (A) Dredging, filling or otherwise altering any bay,  
2 estuary, salt marsh, river mouth, slough, or  
3 lagoon;
- 4 (B) Any development [~~which~~] that would reduce the  
5 size of any beach or other area usable for public  
6 recreation;
- 7 (C) Any development [~~which~~] that would reduce or  
8 impose restrictions upon public access to tidal  
9 and submerged lands, beaches, portions of rivers  
10 and streams within the special management areas,  
11 and the mean high tide line where there is no  
12 beach;
- 13 (D) Any development [~~which~~] that would substantially  
14 interfere with or detract from the line of sight  
15 toward the sea from the state highway nearest the  
16 coast; and
- 17 (E) Any development [~~which~~] that would adversely  
18 affect water quality, existing areas of open  
19 water free of visible structures, existing and  
20 potential fisheries and fishing grounds, wildlife  
21 habitats, or potential or existing agricultural  
22 uses of land."



1 SECTION 2. Section 205A-46, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§205A-46 Variances. (a) A variance may be granted for a  
4 structure or activity otherwise prohibited in this part if the  
5 authority finds in writing, based on the record presented, that  
6 the proposed structure or activity is necessary for or ancillary  
7 to:

8 (1) Cultivation of crops;

9 (2) Aquaculture;

10 (3) Landscaping; provided that the authority finds that  
11 the proposed structure or activity will not adversely  
12 affect beach processes and will not artificially fix  
13 the shoreline;

14 (4) Drainage;

15 (5) Boating, maritime, or watersports recreational  
16 facilities;

17 (6) Facilities or improvements by public agencies or  
18 public utilities regulated under chapter 269;

19 (7) Private facilities or improvements that are clearly in  
20 the public interest;

21 (8) Private facilities or improvements [~~which will neither~~  
22 ~~adversely affect beach processes nor artificially fix~~



1 ~~the shoreline]; provided that the authority also finds~~  
2 ~~that hardship will result to the applicant if the~~  
3 ~~facilities or improvements are not allowed within the~~  
4 ~~shoreline area;~~

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

13 ~~[-(10)]~~ (9) Moving of sand from one location seaward of the  
14 shoreline to another location seaward of the  
15 shoreline~~[+]~~ within adjacent areas; provided that the  
16 authority also finds that moving of sand ~~[will not~~  
17 ~~adversely affect beach processes,~~] will not diminish  
18 the size of a public beach~~[7]~~ and will be necessary to  
19 stabilize an eroding shoreline.

20 (b) A variance may be granted for private facilities or  
21 improvements that may artificially fix the shoreline; provided  
22 that:



1        (1) The facilities or improvements are clearly in the  
2                    public interest and the authority imposes conditions  
3                    to prohibit any structure seaward of the existing  
4                    shoreline unless it is clearly in the public interest;  
5                    and

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

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

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

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

18        (2) To minimize risk of adverse impacts on beach  
19                    processes;

20        (3) To minimize risk of structures failing and becoming  
21                    loose rocks or rubble on public property; and



1 (4) To minimize adverse impacts on public views to, from,  
2 and along the shoreline."

3 SECTION 3. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 4. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect upon its approval.

9

INTRODUCED BY: Cindy Evans

JAN 25 2010





**Report Title:**

Shoreline; Public Access

**Description:**

Requires the consideration of risks from coastal hazards when reviewing a development in a special management area. Preserves public access and public shoreline access from development.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

