

JAN 23 2009

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]~~ right-of-way from a public highway to areas in
11 the mountains where there are existing facilities for hiking,
12 hunting, fruit-picking, ti-leaf sliding, and other recreational
13 purposes, and where there are existing mountain trails[-];
14 provided that the county shall ensure reasonable street parking
15 near public access areas in the special management area under
16 chapter 205A."



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

3 "(b) Objectives.

4 (1) Recreational resources;

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

7 (2) Historic resources;

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

13 (3) Scenic and open space resources;

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

17 (4) Coastal ecosystems;

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

21 (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 of coastal resources and hazards.
- 14 (8) Public participation;
- 15 (A) Stimulate public awareness, education, and
16 participation in coastal management.
- 17 (9) Beach protection;
- 18 (A) Protect beaches and coastal dunes for public use
19 and recreation[-], and as natural barriers to
20 coastal hazards.
- 21 (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 resources will be
19 unavoidably damaged by development; or
20 requiring reasonable monetary compensation
21 to the State for recreation when repair or
22 replacement is not feasible or desirable;



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



- 1 artificial reefs for surfing and fishing;
2 and
3 (viii) Encouraging reasonable dedication of
4 shoreline areas with recreational value for
5 public use as part of discretionary
6 approvals or permits by the land use
7 commission, board of land and natural
8 resources, and county authorities; and
9 crediting such dedication against the
10 requirements of section 46-6.
- 11 (2) Historic resources;
- 12 (A) Identify and analyze significant archaeological
13 resources;
- 14 (B) Maximize information retention through
15 preservation of remains and artifacts or salvage
16 operations; and
- 17 (C) Support state goals for protection, restoration,
18 interpretation, and display of historic
19 resources.
- 20 (3) Scenic and open space resources;
- 21 (A) Identify valued scenic resources in the coastal
22 zone management area;



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



1 land and water uses, recognizing competing water
2 needs; and

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

9 (5) Economic uses;

10 (A) Concentrate coastal dependent development in
11 appropriate areas;

12 (B) Ensure that coastal dependent development such as
13 harbors and ports, and coastal related
14 development such as visitor industry facilities
15 and energy generating facilities, are located,
16 designed, and constructed to minimize adverse
17 social, visual, and environmental impacts in the
18 coastal zone management area; and

19 (C) Direct the location and expansion of coastal
20 dependent developments to areas presently
21 designated and used for such developments and
22 permit reasonable long-term growth at such areas,



1 and permit coastal dependent development outside
2 of presently designated areas when:

3 (i) Use of presently designated locations is not
4 feasible;

5 (ii) Adverse environmental effects are minimized;
6 and

7 (iii) The development is important to the State's
8 ~~[economy.]~~ infrastructure and utilities.

9 (6) Coastal hazards;

10 (A) Develop and communicate adequate information
11 about ~~[storm-wave,]~~ tsunami, ~~[flood,]~~ hurricanes,
12 wind, storm waves, flooding, erosion, sea level
13 rise, subsidence, and point and nonpoint source
14 pollution hazards;

15 (B) ~~[Control]~~ Engage in early planning and control
16 development in areas subject to ~~[storm-wave,]~~
17 tsunami, ~~[flood,]~~ hurricanes, wind, storm waves,
18 flooding, erosion, [hurricane, wind,] sea level
19 rise, subsidence, and point and nonpoint source
20 pollution hazards;



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



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



- 1 (10) Marine resources;
- 2 (A) Ensure that the use and development of marine and
- 3 coastal resources are ecologically and
- 4 environmentally sound and economically
- 5 beneficial;
- 6 (B) Coordinate the management of marine and coastal
- 7 resources and activities to improve effectiveness
- 8 and efficiency;
- 9 (C) Assert and articulate the interests of the State
- 10 as a partner with federal agencies in the sound
- 11 management of ocean resources within the United
- 12 States exclusive economic zone;
- 13 (D) Promote research, study, and understanding of
- 14 ocean processes, marine life, and other ocean
- 15 resources in order to acquire and inventory
- 16 information necessary to understand how ocean
- 17 development activities relate to and impact upon
- 18 ocean and coastal resources; and
- 19 (E) Encourage research and development of new,
- 20 innovative technologies for exploring, using, or
- 21 protecting marine and coastal resources."



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

3 1. By amending the definitions of "department" and
4 "development" to read:

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

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

- 13 (1) Placement or erection of any solid material or any
14 gaseous, liquid, solid, or thermal waste;
- 15 (2) Grading, removing, dredging, mining, or extraction of
16 any materials;
- 17 (3) Change in the density or intensity of use of land,
18 including but not limited to the division or
19 subdivision of land;
- 20 (4) Change in the intensity of use of water, ecology
21 related thereto, or of access thereto; and



1 (5) Construction, reconstruction, [~~demolition,~~] or
2 alteration of the size, shape, footprint, or area of
3 any structure.

4 "Development" does not include the following:

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

7 (2) Repair or maintenance of roads and highways within
8 existing rights-of-way;

9 (3) Routine maintenance dredging of existing streams,
10 channels, and drainage ways;

11 (4) Repair and maintenance of underground utility lines,
12 including but not limited to water, sewer, power, and
13 telephone and minor appurtenant structures such as pad
14 mounted transformers and sewer pump stations;

15 (5) Zoning variances, except for height, density, parking,
16 and shoreline setback;

17 (6) Repair, maintenance, or interior alterations to
18 existing structures;

19 (7) Demolition or removal of structures, except those
20 structures located on any historic site as designated
21 in national or state registers;



- 1 (8) Use of any land for the purpose of cultivating,
2 planting, growing, and harvesting plants, crops,
3 trees, and other agricultural, horticultural, or
4 forestry products or animal husbandry, or aquaculture
5 or mariculture of plants or animals, or other
6 agricultural purposes;
- 7 (9) Transfer of title to land;
- 8 (10) Creation or termination of easements, covenants, or
9 other rights in structures or land;
- 10 (11) Subdivision of land into lots greater than twenty
11 acres in size;
- 12 (12) Subdivision of a parcel of land into four or fewer
13 parcels when no associated construction activities are
14 proposed; provided that any land which is so
15 subdivided shall not thereafter qualify for this
16 exception with respect to any subsequent subdivision
17 of any of the resulting parcels;
- 18 (13) Installation of underground utility lines and
19 appurtenant aboveground fixtures less than four feet
20 in height along existing corridors;
- 21 (14) Structural and nonstructural improvements to existing
22 single-family residences, where otherwise permissible;



1 (15) Nonstructural improvements to existing commercial
2 structures; and

3 (16) Construction, installation, maintenance, repair, and
4 replacement of civil defense warning or signal devices
5 and sirens;

6 provided that whenever the authority finds that any excluded
7 use, activity, or operation may have a cumulative impact, or a
8 significant environmental or ecological effect on a special
9 management area, that use, activity, or operation shall be
10 defined as "development" for the purpose of this part."

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

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

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



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

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

7 "**§205A-26 Special management area guidelines.** In
8 implementing this part, the authority shall adopt the following
9 guidelines for the review of developments proposed in the
10 special management area:

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

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

19 (B) Adequate and properly located public recreation
20 areas and wildlife preserves are reserved;

21 (C) Provisions are made for solid and liquid waste
22 treatment, disposition, and management which will



1 minimize adverse effects upon special management
2 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 adverse
16 effect is minimized to the extent practicable and
17 clearly outweighed by public health, safety, or
18 compelling public interests. Such adverse
19 effects shall include[-] but not be limited to[-]
20 the potential cumulative impact of individual
21 developments, each one of which taken in itself
22 might not have a [~~substantial~~] significant



1 adverse effect, and the elimination of planning
2 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 finding
9 of consistency does not preclude concurrent
10 processing where a general plan or zoning
11 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 would reduce the size of
5 any beach or other area usable for public
6 recreation;
- 7 (C) Any development which would reduce or impose
8 restrictions upon public access to tidal and
9 submerged lands, beaches, portions of rivers and
10 streams within the special management areas and
11 the mean high tide line where there is no beach;
- 12 (D) Any development which would substantially
13 interfere with or detract from the line of sight
14 toward the sea from the state highway nearest the
15 coast; and
- 16 (E) Any development which would adversely affect
17 water quality, existing areas of open water free
18 of visible structures, existing and potential
19 fisheries and fishing grounds, wildlife habitats,
20 or potential or existing agricultural uses of
21 land."



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

3 "§205A-43 Establishment of shoreline setbacks and duties
4 and powers of the department. (a) Setbacks along shorelines
5 are established of not less than [~~twenty feet and not more than~~]
6 forty feet inland from the shoreline. The department shall
7 adopt rules pursuant to chapter 91 [~~7~~] prescribing procedures for
8 determining the shoreline setback line, and shall enforce the
9 shoreline setbacks and rules pertaining thereto.

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

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

15 ~~(2) The department shall review]~~ reviewing the plans of
16 all applicants who propose any structure, activity, or
17 facility that would be prohibited without a variance
18 pursuant to this part. The department may require
19 that the plans be supplemented by accurately mapped
20 data and photographs showing natural conditions and
21 topography relating to all existing and proposed
22 structures and activities."



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

3 "(a) Prior to action on a variance application, the
4 authority shall hold a public hearing under chapter 91. By
5 adoption of rules under chapter 91, the authority may delegate
6 responsibility to the department. Public and private notice,
7 including reasonable notice to abutting property owners and
8 persons who have requested this notice, shall be provided, but a
9 public hearing may be waived prior to action on a variance
10 application for:

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

13 (2) Protection of a legal structure costing more than
14 [~~\$20,000,~~] \$50,000; provided the structure is at risk
15 of immediate damage from shoreline erosion;

16 (3) Other structures or activities; provided that no
17 person or agency has requested a public hearing within
18 twenty-five calendar days after public notice of the
19 application; [~~or~~]

20 (4) Temporary emergency protection of a legal inhabited
21 dwelling; provided the structure is at risk of



1 immediate damage from shoreline erosion or other
 2 coastal hazard; or
 3 [-(4)-] (5) Maintenance, repair, reconstruction, and minor
 4 additions or alterations of legal boating, maritime,
 5 or watersports recreational facilities, which result
 6 in little or no interference with natural shoreline
 7 processes."

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

10 "**§205A-45 Shoreline setback lines established by county.**

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

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

20 (c) The several counties, through rules adopted pursuant
 21 to chapter 91, or ordinance, or under existing authority, shall
 22 use the shoreline setback as a tool to minimize the damage from



1 coastal hazards, including but not limited to tsunamis,
2 hurricanes, wind, storm waves, flooding, erosion, sea level
3 rise, subsidence, and pollution. Measures such as early
4 planning, variances for innovative design, and minimum buildable
5 areas shall be considered.

6 (d) The several counties, through rules adopted pursuant
7 to chapter 91, or ordinance, or under existing authority, shall
8 ensure that:

9 (1) Any parcels created after the subdivision of an
10 original parcel are sufficiently large to accommodate
11 a shoreline setback based on the average annual
12 erosion rate; and

13 (2) Public safety, public access, and public shoreline
14 areas are protected."

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

17 "**§205A-46 Variances.** (a) A variance may be granted for a
18 structure or activity otherwise prohibited in this part if the
19 authority finds in writing, based on the record presented, that
20 the proposed structure or activity is necessary for or ancillary
21 to:

22 (1) Cultivation of crops;

- 1 (2) Aquaculture;
- 2 (3) Landscaping; provided that the authority finds that
- 3 the proposed structure or activity will not adversely
- 4 affect beach processes and will not artificially fix
- 5 the shoreline;
- 6 (4) Drainage;
- 7 (5) Boating, maritime, or watersports recreational
- 8 facilities;
- 9 (6) Facilities or improvements by public agencies or
- 10 public utilities regulated under chapter 269;
- 11 (7) Private facilities or improvements that are clearly in
- 12 the public interest;
- 13 (8) Private facilities or improvements [~~which will neither~~
- 14 ~~adversely affect beach processes nor artificially fix~~
- 15 ~~the shoreline~~]; provided that the authority also finds
- 16 that hardship will result to the applicant if the
- 17 facilities or improvements are not allowed within the
- 18 shoreline area; or
- 19 [~~(9) Private facilities or improvements that may~~
- 20 ~~artificially fix the shoreline; provided that the~~
- 21 ~~authority also finds that shoreline erosion is likely~~
- 22 ~~to cause hardship to the applicant if the facilities~~



1 ~~or improvements are not allowed within the shoreline~~
2 ~~area, and the authority imposes conditions to prohibit~~
3 ~~any structure seaward of the existing shoreline unless~~
4 ~~it is clearly in the public interest, or~~

5 ~~(10)]~~ (9) Moving of sand from one location seaward of the
6 shoreline to another location seaward of the
7 shoreline ~~[+] within adjacent areas;~~ provided that the
8 authority also finds that moving of sand ~~[will not~~
9 ~~adversely affect beach processes,]~~ will not diminish
10 the size of a public beach ~~[+] and will be necessary to~~
11 stabilize an eroding shoreline.

12 (b) A variance may be granted for private facilities or
13 improvements that may artificially fix the shoreline; provided
14 that the facilities or improvements are clearly in the public
15 interest and the authority imposes conditions to prohibit any
16 structure seaward of the existing shoreline unless it is clearly
17 in the public interest; provided further that any structure or
18 improvement does not limit or severely reduce public access or
19 public shoreline use.

20 ~~[-b)]~~ (c) Hardship shall be defined in rules adopted by
21 the authority under chapter 91. Hardship shall not be
22 determined as a result of county zoning changes, planned



1 development permits, cluster permits, or subdivision approvals
2 after June 16, 1989, or as a result of any other permit or
3 approval listed in rules adopted by the authority.

4 ~~(e)~~ (d) No variance shall be granted unless appropriate
5 conditions are imposed:

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

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

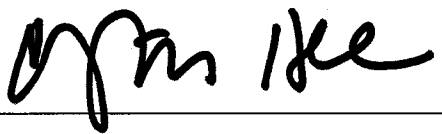
17 SECTION 10. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19



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

2

INTRODUCED BY: 



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 tsunamis. Preserves public access and public shoreline access. Extends shoreline setback to not less than forty feet from shoreline and requires counties to account for annual erosion rates.

