
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 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[7] but not limited to[7]
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, public access,
8 and scenic 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, sea-level rise, subsidence,
19 and point and nonpoint source pollution hazards;

20 (C) Ensure that developments comply with requirements
21 of the ~~[Federal]~~ National Flood Insurance
22 Program; and



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



1 with coastal issues, developments, and government
2 activities; and

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

6 (9) Beach protection;

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

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

17 (C) Minimize the construction of public erosion-
18 protection structures seaward of the shoreline.

19 (10) Marine resources;

20 (A) Ensure that the use and development of marine and
21 coastal resources are ecologically and



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

19 SECTION 4. Section 205A-22, Hawaii Revised Statutes, is
20 amended by amending the definitions of "department",
21 "development", "special management area emergency permit", and
22 "structure", to read as follows:



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

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

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

21 "Development" does not include the following:



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



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



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

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

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

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

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



1 "**§205A-26 Special management area guidelines.** In
2 implementing this part, the authority shall adopt the following
3 guidelines for the review of developments proposed in the
4 special management area:

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

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

13 (B) Adequate and properly located public recreation
14 areas and wildlife preserves are reserved;

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

19 (D) Alterations to existing land forms and
20 vegetation, except crops, and construction of
21 structures shall cause minimum adverse effect to
22 water resources and scenic and recreational



1 amenities and minimum danger of floods, wind
2 damage, wave damage, storm surge, landslides,
3 erosion, sea-level rise, siltation, or failure in
4 the event of earthquake[-];

5 (2) No development shall be approved unless the authority
6 has first found:

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

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



1 (C) That the development is consistent with the
2 county general plan and zoning. Such a finding
3 of consistency does not preclude concurrent
4 processing where a general plan or zoning
5 amendment may also be required[-];

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

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

12 and

13 (3) The authority shall seek to minimize, where
14 reasonable:

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

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

21 (C) Any development which would reduce or impose
22 restrictions upon public access to tidal and



1 submerged lands, beaches, portions of rivers and
2 streams within the special management areas, and
3 the mean high tide line where there is no beach;

4 (D) Any development which would substantially
5 interfere with or detract from the line of sight
6 toward the sea from the state highway nearest the
7 coast; and

8 (E) Any development which would adversely affect
9 water quality, existing areas of open water free
10 of visible structures, existing and potential
11 fisheries and fishing grounds, wildlife habitats,
12 or potential or existing agricultural uses of
13 land."

14 SECTION 6. Section 205A-43, Hawaii Revised Statutes, is
15 amended to read as follows:

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



1 (b) The powers and duties of the department shall
2 include[-] but not be limited to[+]
3 ~~(1) The department shall adopt rules under chapter 91~~
4 ~~prescribing procedures for determining the shoreline setback~~
5 ~~line; and~~
6 ~~(2) The department shall review]~~ reviewing the plans of
7 all applicants who propose any structure, activity, or facility
8 that would be prohibited without a variance pursuant to this
9 part. The department may require that the plans be supplemented
10 by accurately mapped data and photographs showing natural
11 conditions and topography relating to all existing and proposed
12 structures and activities."

13 SECTION 7. Section 205A-43.5, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Prior to action on a variance application, the
16 authority shall hold a public hearing under chapter 91. By
17 adoption of rules under chapter 91, the authority may delegate
18 responsibility to the department. Public and private notice,
19 including reasonable notice to abutting property owners and
20 persons who have requested this notice, shall be provided, but a
21 public hearing may be waived prior to action on a variance
22 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 result
17 in little or no interference with natural shoreline
18 processes."

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

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



1 (a) The several counties through rules adopted pursuant to
2 chapter 91 or ordinance may require that shoreline setback lines
3 be established at [~~distances greater than that established in~~
4 ~~this part.~~] a distance not less than the average annual erosion
5 rate based on a fifty-year projection, in addition to the
6 minimum distance established in 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 tsunamis,
14 hurricanes, wind, storm waves, flooding, erosion, sea-level
15 rise, subsidence, and pollution. Measures such as 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 9. 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 the authority also finds that shoreline erosion is likely
6 to cause hardship to the applicant if the facilities or
7 improvements are not allowed within the shoreline area, and the
8 authority imposes conditions to prohibit any structure seaward
9 of the existing shoreline unless it is clearly in the public
10 interest; provided further that any structure or improvement
11 does not limit or severely reduce public access or public
12 shoreline use.

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

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

21 (1) To maintain safe lateral access to and along the
22 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 10. This Act does not affect rights and duties
8 that matured, penalties that were incurred, and proceedings that
9 were begun, before its effective date.

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

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



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. (HB1037 HD1)

