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**FIRST CIRCUIT**  
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Attorneys for Defendants  
JAMES O'SHEA AND DENISE O'SHEA  
as Trustees of the James and Denise O'Shea  
Trust, JAMES O'SHEA, individually and  
DENISE O'SHEA, individually

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAI'I

STATE OF HAWAI'I,

Plaintiff/Counterclaim  
Defendant,

vs.

JAMES O'SHEA AND DENISE O'SHEA  
as Trustees of the James and Denise O'Shea  
Trust, JAMES O'SHEA, individually and  
DENISE O'SHEA, individually, JOHN  
AND JANE DOES 1-10,

Defendants/Counterclaimants.

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JAMES O'SHEA and DENISE O'SHEA as  
Trustees of the James and Denise  
O'Shea Trust, JAMES O'SHEA,  
individually and DENISE O'SHEA,  
individually,

Third-Party Plaintiffs/  
Counterclaim Defendants,

Civil No. 17-1-1543-09 JPC  
(Other Civil Action, Injunctive  
Relief)(Environmental Court)

DEFENDANTS' SUPPLEMENTAL BRIEF IN  
SUPPORT OF THEIR OPPOSITION TO  
PLAINTIFF STATE OF HAWAII'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT WITH  
RESPECT TO THE STATE'S PRAYER FOR A  
MANDATORY INJUNCTION, OR IN THE  
ALTERNATIVE, FOR DECLARATORY  
JUDGMENT; DECLARATION OF GREGORY  
W. KUGLE; EXHIBITS "Q" & "R";  
CERTIFICATE OF SERVICE

Hearing:

DATE: April 9, 2021 & June 4, 2021  
TIME: 1:30 p.m.  
JUDGE: Honorable Jeffrey P. Crabtree

Trial Date: None

vs.

RUPERT T. OBERLOHR, individually;  
RUPERT T. OBERLOHR, as Trustee of the  
Rupert Oberlohr Trust; DOE  
DEFENDANTS 1-100,

Third-Party Defendants/  
Counterclaimants.

DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR OPPOSITION TO  
PLAINTIFF STATE OF HAWAII'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
WITH RESPECT TO THE STATE'S PRAYER FOR A MANDATORY INJUNCTION, OR IN  
THE ALTERNATIVE, FOR DECLARATORY JUDGMENT

DEFENDANTS JAMES O'SHEA AND DENISE O'SHEA, as Trustees of the James and Denise O'Shea Trust, JAMES O'SHEA, individually, and DENISE O'SHEA, individually ("Defendants" "Third-Party Plaintiffs" or "O'Sheas"), hereby submit this Supplemental Brief in support of their opposition to Plaintiff STATE OF HAWAII's ("Plaintiff" or "State") Motion for Partial Summary Judgment with Respect to the State's Prayer for Mandatory Injunction, or in the Alternative, for Declaratory Judgment, filed on March 8, 2021 (the "Motion"). This brief responds to the State's Supplemental Memorandum in Support, filed April 30, 2021 ("Supp. Memo.")

**I. INTRODUCTION**

The location of a shoreline is a factual determination which has tremendous effect upon the rights of beachfront private property owners. According to Haw. Rev. Stat. ("HRS") § 205A-42 and Haw. Admin. R. ("HAR") § 13-222, the authority to determine a shoreline is vested with the Board of Land and Natural Resources ("BLNR"). The State attempts to characterize this reservation of authority to the BLNR as producing absurd results given the purposes of the Coastal Zone Management Act ("CZMA"), as stated by HRS § 205A-2. However, as will be explained infra, the true absurdity, inconsistency, contradiction, and illogicality lies with the

disparate results which would arise if the Court should make a factual determination as to the location of the shoreline. Moreover, even if the State is correct that this Court and the BLNR can both determine the location of the shoreline, the cases the State relies on make clear that that determination is a fact-intensive inquiry that is not appropriate on summary judgment. Finally, the State's attempt to bolster its inconclusive and debated photographic evidence is not admissible.

## **II. ARGUMENT**

### **A. The State Improperly Relies On Act 16, Amending The CZMA in 2020**

The State points to language in the CZMA which it characterizes as “prohibiting the construction of private seawalls”. *See* Supp. Memo. at 8; *see also* Supp. Memo at 3. The State fails to mention that the quoted language was added to the CZMA by Act 16, which was passed in September 2020, three years after this case commenced! *See* Act 16 attached hereto as Exhibit “Q” at p. 16. Nor does the State point out that Act 16 does not have retroactive effect, but rather expressly states that it does not affect a case like this that was begun long before its effective date. *See Id.* at p. 36 (Act 16 “does not affect rights and duties that matured, penalties that were incurred, *and proceedings that were begun before its effective date.*”) (Emphasis added). By its very terms, Act 16 does not apply to this case which commenced before September 2020.

### **B. The *Ashford* boundary line and the Shoreline as determined by the BLNR are the Same**

The State attempts to draw a line in the sand between an *Ashford* boundary line and a shoreline as determined by the BLNR, pursuant to the CZMA. The crux of the State's argument is that the CZMA is merely a conservation statute that provides for a shoreline determination by the BLNR solely as a means for measuring the shoreline setback area, while the *Ashford* boundary line serves the separate purpose of marking the boundary between public and private lands. *See* Supp. Memo. at 3. The State's arguments deliberately ignore the stated purposes of the CZMA,

which evidences that the shoreline as determined by the BLNR is intended to serve the same purpose as the *Ashford* boundary line, *in addition to* serving as a means for determining the shoreline setback area. Thus, the shoreline as determined by the BLNR and the *Ashford* boundary line are one in the same.

The *Ashford* boundary line arises out of the public trust doctrine and delineates the boundary between privately owned land and land held in trust for the public use. *See County of Hawaii v. Sotomura*, 55 Haw. 176 (1973); *In re Application of Ashford*, 50 Haw. 314 (1968). Essentially, the *Ashford* boundary is a means of holding coastal areas open for public enjoyment. The CZMA, in much the same way, very clearly evinces its objective to “provide coastal recreational opportunities to the public.” HRS § 205A-2(b)(1). Act 188, which gave rise to the CZMA even outright states that “...the controlling purpose of this Act is to provide for the effective management, *beneficial use*, protection, and development of the coastal zone...” 1977 Haw. Sess. Laws Act 188, § 1, attached hereto as Exhibit “R”, at 396 (emphases added). Thus, the CZMA has entirely incorporated the objective of the *Ashford* boundary line into its text, evidencing that it is much more than just a conservation statute, and indicating that the determination of the shoreline pursuant to its terms serves a much larger purpose than just defining the shoreline setback area.

Furthermore, while the *Ashford* boundary line has delineated the boundary between public and private lands in the past, the CZMA has entirely subsumed, and also supplemented, the definition of the *Ashford* boundary line<sup>1</sup>, indicating an intent for the BLNR determined shoreline to replace the *Ashford* boundary line.

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<sup>1</sup> The CZMA defines the shoreline as “...the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.” HRS § 205A-1.

Relevant caselaw defines the *Ashford* boundary line as the highest wash of the waves, usually evidenced by the edge of vegetation or the line of debris. *See e.g. County of Hawaii v. Sotomura*, 55 Haw. 176, 179 (1973).

The objectives of the *Ashford* boundary line are unquestionably incorporated into the CZMA. The common definition of the *Ashford* boundary line and the shoreline as defined by the CZMA only serves to further affirm that the CZMA is meant to abrogate the authority of the Court to make factual determinations as to the location of the shoreline.

**C. The Authority to Certify the Shoreline is vested Solely with the BLNR**

HRS § 205A-42 specifically directs the BLNR to “prescribe procedures for determining a shoreline.” HAR § 13-222 was adopted in 1988 and sets out those procedures in specificity. The State argues that the BLNR’s authority to determine the shoreline is designed to coexist with the Court’s authority to determine the *Ashford* boundary line, rather than to abrogate it. This contention flies in the face of the CZMA’s intended purposes.

Act 188, which gave rise to the CZMA, very clearly states as follows:

**SECTION 1. Findings and Purpose.**

...

The legislature further finds that Hawaii’s environment is both undermanaged and *overregulated; that regulatory mechanisms must not be added onto but rather combined with the existing systems...*

Exhibit “R” at 396 (emphases added).

Thus, it is apparent that the legislature intended not to add onto the existing *Ashford* boundary line system, but to supersede and combine it into the CZMA. As stated previously, this intent is made abundantly clear by the CZMA’s incorporation of the *Ashford* boundary line definition into its own definition of the shoreline.

**D. Allowing the Court to Make a Determination of the *Ashford* boundary line that is Separate from the BLNR’s Determination of the Shoreline Would Lead to Absurd Results**

Contradictorily, the State points to “the adoption of the *Ashford* definition of the ‘shoreline’ into the CZMA” as evidence that the CZMA meant to incorporate, rather than to

supersede, the common law.<sup>2</sup> See State’s Supp. Memo. at 6. However, the State fails to mention that, while the CZMA did adopt the *Ashford* definition of the shoreline, it has also expanded greatly upon that definition in ways which would contradict a separate determination of the shoreline by the Court.

While relevant caselaw defines the shoreline as “the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or the line of debris”, the CZMA supplements that definition with further qualifications.<sup>3</sup> HRS § 205A-1. Notably, the CZMA carves out an exception to its definition that allows the shoreline to be fixed by an artificial structure. HRS § 205A-42(a) (...no determination of a shoreline shall be valid for a period longer than twelve months, except where the shoreline is fixed by artificial structures that have been approved by appropriate government agencies...). It is here where a determination of an *Ashford* boundary line that is separate from the shoreline would lead to absurd results.

While the CZMA allows for the shoreline to be fixed by an approved and privately-owned structure, the common law makes no such accommodations in regard to the *Ashford* boundary line. Thus, a court’s determination of the *Ashford* boundary line could be considerably further mauka than a shoreline that is fixed by an approved and privately-owned structure. Such a determination by a court would leave the privately-owned structure firmly within the boundaries of public land and subject to trespass proceedings brought by the State, despite the structure’s approval by relevant government agencies. This resulting absurdity precludes the Court’s independent exercise of authority to determine the *Ashford* boundary line and evidences the legislature’s intent for the BLNR’s shoreline determination to abrogate the Court’s authority to determine the location of the *Ashford* boundary line. *State v. Tsujimura*, 140

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<sup>2</sup> It should be noted that even by the State’s own explanation, the *Ashford* boundary line is synonymous with the shoreline.

<sup>3</sup> These qualifications include that the wash of the waves must be “other than storm and seismic waves” and that highest wash of the waves are those that occur “at high tide during the season of the year in which the highest wash of the waves occurs”. HRS § 205A-1.

Haw. 299, 307 (2017) (The legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction[,], and illogicality.)

**E. Determination of the Shoreline in any form Should be left to the BLNR**

The State contends that it is not asking the Court to make an exact determination of the shoreline, only whether the shoreline is mauka or makai of the O’Shea’s seawall. This argument is a red herring, as the State is still asking the Court to determine the location of the shoreline with enough specificity to critically affect the O’Shea’s property rights.

Whether the Court were to make an exact determination of the shoreline or a general determination as to whether the shoreline lies mauka or makai of the O’Shea’s seawall, the legal effect upon the O’Shea’s property rights would be exactly the same. Furthermore, because the location of the shoreline is so contested in this case, the Court’s decision as to even its general location could boil down to a matter of several feet. Determination of the shoreline to such a precise area should be informed by testimony and evidence which can only be obtained by a land survey conducted by the BLNR. Even if this were for a Court to decide, rather than an agency with expertise, this is not an issue which is properly decided on summary judgment. The State has offered no surveys in support of its Motion, just some equivocal photographs that depict the Mooney property or the O’Shea property, or others. As such, the Court should decline to make a determination as to the location of the shoreline in any form so that a proper certification of the shoreline may be conducted by the BLNR.

**F. Whether the O’Shea’s Seawall Needs to be Removed before a Shoreline Certification is Made is an Issue of Fact that Should be Left to the BLNR**

The State argues that it is legally impossible for the BLNR to certify the shoreline given the location of the O’Shea’s seawall. The State’s argument assumes that the O’Shea’s seawall encroaches onto State land despite no determination of that fact having been made. It is the O’Shea’s position that their seawall does not encroach onto State land. However, leaving that

point aside, whether a structure encroaches on State land is exactly the type of determination that should be left to the BLNR pursuant to HRS § 205A-42 and HAR § 13-222.

As explained previously, the shoreline is the determining boundary between private and public lands. The BLNR has the sole discretion to determine where that boundary lies. Thus, the decision of whether it is impossible for the BLNR to determine that boundary due to the encroachment of any structure onto State land should be made by the BLNR itself, not by the Court. Any determination by the Court that the O'Shea's seawall encroaches on State property, without a determination by the BLNR, would have the same effect on the O'Shea's property rights as a judicial determination of the shoreline, usurping power that was expressly delegated to the BLNR by the legislature.

The O'Shea's are not asking to be rewarded for any alleged wrongdoing on their part as the State claims, they are merely requesting that the Court allow them the opportunity to undergo the proper, legislatively defined, process to determine whether their seawall is, in fact, encroaching upon State land.

**G. The State Invokes Equity But That Cuts Both Ways.**

The State invokes the Court's equitable powers to order a mandatory injunction that the wall be removed. State's Supp. Memo. at 12. Such a remedy is not appropriate under the circumstances and at this state of the case.

For instance, the State did not dispute Mr. O'Shea's declaration and exhibits demonstrating that the State repeatedly denied him the soft solution of sand pushing to protect his property, while allowing his neighbors on both sides to protect their properties with sand pushing. *See* O'Shea Declaration at ¶¶ 10-15. The Court must consider the inequity of this when the result of the State's denial of such protection was the collapse of the seawall fronting the O'Shea property.



Nor did the State dispute the engineering report that determined the immediate cause of the collapse of the seawall was the excessive torquing and leveraging employed by Mr. Oberlohr in the days before the collapse. *See* O’Shea Declaration at ¶ 20-31 and Exhibit “D.” To the contrary, the State claims that causation doesn’t matter. But this case is not the typical case where gradual and imperceptible erosion undermine a protection structure. This was a sudden, violent act, almost an act of sabotage, which caused the immediate and catastrophic failure of a seawall which had been in place since 1957, long before the state or county regulations pertaining to same.

Finally, the State’s Motion and briefs are completely silent as to the consequences if the Court grants the relief it seeks. If the O’Shea’s wall is removed and the State is correct that the ocean will immediately move mauka into the O’Shea property, what will happen next? The O’Shea’s remaining yard and slab-on-grade home will be undermined. Again assuming the State is correct, the ocean will immediately flank around the existing Mooney wall and Oberlohr wall, causing the failure of each. How can the State ask the Court to grant relief which will – if the State’s premise about the shoreline is correct – have an immediate and devastating effect on the O’Shea’s home, and the homes, walls and properties of Mooney and Oberlohr.<sup>4</sup>

#### **H. The Additional Evidence Is Not Properly Authenticated.**

It is the burden of the party seeking summary judgment to offer admissible evidence. When offering photographic evidence, typical authentication requires the offering witness to testify that she is familiar with the area in question and the photograph accurately depicts the area on the date in question. Ms. Habel’s declaration doesn’t do this. She simply testifies that she flies drones and takes pictures using the drone. Exhibits 17 and 18 are not admissible.

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<sup>4</sup> The Mooneys are not even parties to this case, which begs another question: how can the State introduce evidence that indisputably shows work being performed on the Mooney property, and yet take a completely different position – non action – with respect to them? Again, a party that seeks equity must do equity.

### III. CONCLUSION

For the reasons stated above and the record and files in this case, Plaintiff's Motion should be denied in its entirety.

DATED: Honolulu, Hawaii May 21, 2021.

DAMON KEY LEONG KUPCHAK HASTERT

/s/ Gregory W. Kugle

GREGORY W. KUGLE

LOREN A SEEHASE

VERONICA A. NORDYKE

Attorneys for Defendants and Third-Party Plaintiffs

JAMES O'SHEA AND DENISE O'SHEA

as Trustees of the James and Denise O'Shea

Trust, JAMES O'SHEA, individually and

DENISE O'SHEA, individually

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,

Plaintiff,

vs.

JAMES O'SHEA AND DENISE  
O'SHEA as Trustees of the James and  
Denise O'Shea Trust, JAMES O'SHEA,  
individually and DENISE O'SHEA,  
individually, JOHN AND JANE DOES 1  
– 10,

Defendants.

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JAMES O'SHEA AND DENISE  
O'SHEA as Trustees of the James and  
Denise O'Shea Trust, JAMES O'SHEA,  
individually and DENISE O'SHEA,  
individually,

Third-Party Plaintiffs,

vs.

RUPERT T. OBERLOHR individually;  
RUPERT T. OBERLOHR as Trustee of  
the Rupert Oberlohr Trust; Doe  
Defendants 1-100,

Third-Party Defendant.

CIVIL NO. 17-1-1543-09 JPC  
(Other Civil Action, Injunctive Relief)  
(Environmental Court)

DECLARATION OF GREGORY W.  
KUGLE

No Trial Date Set.

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DECLARATION OF GREGORY W. KUGLE

I, GREGORY W. KUGLE, declare as follows:

1. I make this declaration upon personal knowledge, unless otherwise indicated, and am competent to testify to the matters stated in this declaration.
2. I represent the Defendants/Third-Party Plaintiffs in this matter.

3. Attached hereto as Exhibit “Q” is a true and correct copy of Act 16, S.B. 2060, 30<sup>th</sup> Leg., Reg. Sess. (Haw. 2020), as retrieved from the Hawaii State Legislature’s website at: [https://www.capitol.hawaii.gov/session2020/bills/GM1121\\_.pdf](https://www.capitol.hawaii.gov/session2020/bills/GM1121_.pdf) on May 21, 2021.

4. Attached hereto as Exhibit “R” is a true and correct copy of Act 188, Session Laws of Hawaii 1977 at 396-403, as retrieved from the Hawaii State Legislature’s website at: [https://www.capitol.hawaii.gov/slh/Years/SLH1977/SLH1977\\_Act188.pdf](https://www.capitol.hawaii.gov/slh/Years/SLH1977/SLH1977_Act188.pdf) on May 12, 2021.

I declare under penalty of perjury under the laws of the State of Hawai`i that the foregoing is true and correct.

Executed this 21st day of May 2021, at Honolulu, Hawai`i.

*/s/ Gregory W. Kugle*

GREGORY W. KUGLE



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

September 15, 2020

**GOV. MSG. NO. 1121**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirtieth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirtieth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on September 15, 2020, the following bill was signed into law:

SB2060 SD2 HD2

RELATING TO COASTAL ZONE MANAGEMENT.  
**Act 016 (20)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

EXHIBIT "Q"

Approved by the Governor

on SEP 15 2020

THE SENATE  
THIRTIETH LEGISLATURE, 2020  
STATE OF HAWAII

**ACT 016**

**S.B. NO.** 2060  
S.D. 2  
H.D. 2

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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. The legislature finds that the coastal zone  
2 management program was established pursuant to Act 188, Session  
3 Laws of Hawaii 1977. The Act declared that it is state policy  
4 to:
- 5           (1) Protect, preserve, and where desirable, restore or  
6           improve the quality of coastal scenic and open space  
7           resources;
- 8           (2) Protect valuable coastal ecosystems from disruption  
9           and minimize adverse impacts on all coastal  
10           ecosystems;
- 11           (3) Reduce hazards to life and property from tsunami,  
12           storm waves, stream flooding, erosion, and subsidence;  
13           and
- 14           (4) Improve the development review process, communication,  
15           and public participation in the management of coastal  
16           resources and hazards.



1           The legislature also finds that a 2012 collaborative study  
2 by the United States Geological Survey and the University of  
3 Hawaii indicates that seventy per cent of beaches in Hawaii are  
4 undergoing a trend of chronic sand loss and shoreline retreat.  
5 Further, more than thirteen miles of beach in the State have  
6 been completely lost to erosion fronting seawalls and  
7 revetments. The Hawaii sea level rise vulnerability and  
8 adaptation report, accepted in 2017 by the Hawaii climate change  
9 mitigation and adaptation commission, finds that with just 1.1  
10 feet of sea level rise, many more miles of beach could be lost  
11 to erosion if widespread shoreline armoring is allowed. This  
12 could mean a loss of five miles of beach on Kauai, seven miles  
13 of beach on Oahu, and eight miles of beach on Maui. Based on  
14 its findings, the report recommends enabling beaches to persist  
15 with sea level rise and suggests integrating sea level rise  
16 considerations into Hawaii's laws regarding coastal zone  
17 management.

18           The legislature further finds that the convergence of dense  
19 development along shorelines, increasing landward migration of  
20 shoreline due to sea level rise and other human and natural  
21 impacts, and extensive beach loss fronting shoreline armoring



1 necessitates revision of existing policies and regulations.  
2 Revision of these existing policies and regulations would both  
3 protect beaches and other coastal environments from further  
4 degradation and reduce the exposure of shorefront communities to  
5 increasing erosion and flooding hazards caused by sea level  
6 rise.

7 The legislature also finds that a recent study by the  
8 University of Hawaii coastal geology group identified several  
9 primary causes for the State's failure to meet coastal zone  
10 management policy objectives. Specifically, the study found  
11 that current policies, ordinances, and practices allow for:

12 (1) The hardening of shorelines through a hardship  
13 variance that is granted based upon demonstrated  
14 hardship brought on by coastal erosion. When granted,  
15 these hardship variances set into motion a cycle of  
16 shoreline armoring that causes "flanking", or  
17 amplified erosion, on properties adjacent to armored  
18 shorelines. This continuous cycle of hardening and  
19 flanking can extend along an entire beach and, in a  
20 section of northeast Oahu, approximately forty-five  
21 per cent of observed shoreline hardening was





1 implemented in response to adjacent hardening. This  
2 cycle, caused by a combination of beach erosion and  
3 coastal policy, has resulted in the narrowing and even  
4 elimination of beaches to the extent that they can no  
5 longer be used for public recreation or cultural  
6 practice; and

- 7 (2) Renovation and expansion of single-family homes in  
8 erosion and flood-prone coastal areas, thereby  
9 extending building lifetimes indefinitely and allowing  
10 for virtually complete coverage of coastal parcels by  
11 these structures. The average building surface area  
12 increased by twenty per cent following the  
13 establishment of the State's coastal zone management  
14 program and, combined with sea level rise, this  
15 development increases the likelihood of mass  
16 structural failure and deposit of debris on public  
17 beaches.

18 The purpose of this Act is to strengthen coastal zone  
19 management policy by amending chapter 205A, Hawaii Revised  
20 Statutes, to protect state beaches and to reduce residential  
21 exposure to coastal hazards.



1 SECTION 2. Section 205A-1, Hawaii Revised Statutes, is  
2 amended by adding three new definitions to be appropriately  
3 inserted and to read as follows:

4 ""Authority" means the county planning commission, except  
5 in counties where the county planning commission is advisory  
6 only, in which case "authority" means the county council or such  
7 body as the council may by ordinance designate. The authority  
8 may, as appropriate, delegate the responsibility for  
9 administering this chapter.

10 "Beach" means a coastal landform primarily composed of sand  
11 from eroded rock, coral, or shell material, or any combination  
12 thereof, that is established and shaped by wave action and tidal  
13 processes. "Beach" includes sand deposits in nearshore  
14 submerged areas, or sand dunes or upland beach deposits landward  
15 of the shoreline, that provide benefits for public use and  
16 recreation, for coastal ecosystems, and as a natural buffer  
17 against coastal hazards.

18 "Coastal hazards" means any tsunami, hurricane, wind, wave,  
19 storm surges, high tide, flooding, erosion, sea level rise,  
20 subsidence, or point and nonpoint source pollution."



1 SECTION 3. 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, beaches, and coastal dunes, from  
20 disruption and minimize adverse impacts on all  
21 coastal ecosystems.



- 1 (5) Economic uses;
- 2 (A) Provide public or private facilities and
- 3 improvements important to the State's economy in
- 4 suitable locations.
- 5 (6) Coastal hazards;
- 6 (A) Reduce hazard to life and property from [~~tsunami,~~
- 7 ~~storm waves, stream flooding, erosion,~~
- 8 ~~subsidence, and pollution.~~] coastal hazards.
- 9 (7) Managing development;
- 10 (A) Improve the development review process,
- 11 communication, and public participation in the
- 12 management of coastal resources and hazards.
- 13 (8) Public participation;
- 14 (A) Stimulate public awareness, education, and
- 15 participation in coastal management.
- 16 (9) Beach and coastal dune protection;
- 17 (A) Protect beaches and coastal dunes for [~~public~~]:
- 18 (i) Public use and recreation[~~-~~];
- 19 (ii) The benefit of coastal ecosystems; and
- 20 (iii) Use as natural buffers against coastal
- 21 hazards; and



- 1           (B) Coordinate and fund beach management and
- 2                           protection.
- 3       (10) Marine and coastal resources;
- 4           (A) Promote the protection, use, and development of
- 5                           marine and coastal resources to assure their
- 6                           sustainability.
- 7       (c) Policies.
- 8       (1) Recreational resources;
- 9           (A) Improve coordination and funding of coastal
- 10                           recreational planning and management; and
- 11           (B) Provide adequate, accessible, and diverse
- 12                           recreational opportunities in the coastal zone
- 13                           management area by:
- 14                           (i) Protecting coastal resources uniquely suited
- 15   for recreational activities that cannot be
- 16   provided in other areas;
- 17                           (ii) Requiring [~~replacement~~] restoration of
- 18   coastal resources [~~having~~] that have
- 19   significant recreational and ecosystem
- 20   value, including[~~r~~] but not limited to coral
- 21   reefs, surfing sites, fishponds, [~~and~~] sand



1 beaches, and coastal dunes, when [~~such~~]  
2 these resources will be unavoidably damaged  
3 by development; or requiring [~~reasonable~~]  
4 monetary compensation to the State for  
5 recreation when [~~replacement~~] restoration is  
6 not feasible or desirable;

7 (iii) Providing and managing adequate public  
8 access, consistent with conservation of  
9 natural resources, to and along shorelines  
10 with recreational value;

11 (iv) Providing an adequate supply of shoreline  
12 parks and other recreational facilities  
13 suitable for public recreation;

14 (v) Ensuring public recreational uses of county,  
15 state, and federally owned or controlled  
16 shoreline lands and waters having  
17 recreational value consistent with public  
18 safety standards and conservation of natural  
19 resources;

20 (vi) Adopting water quality standards and  
21 regulating point and nonpoint sources of



1 pollution to protect, and where feasible,  
2 restore the recreational value of coastal  
3 waters;

4 (vii) Developing new shoreline recreational  
5 opportunities, where appropriate, such as  
6 artificial lagoons, artificial beaches, and  
7 artificial reefs for surfing and fishing;  
8 and

9 (viii) Encouraging reasonable dedication of  
10 shoreline areas with recreational value for  
11 public use as part of discretionary  
12 approvals or permits by the land use  
13 commission, board of land and natural  
14 resources, and county authorities; and  
15 crediting [~~such~~] that dedication against the  
16 requirements of section 46-6;

17 (2) Historic resources;

18 (A) Identify and analyze significant archaeological  
19 resources;



- 1 (B) Maximize information retention through
- 2 preservation of remains and artifacts or salvage
- 3 operations; and
- 4 (C) Support state goals for protection, restoration,
- 5 interpretation, and display of historic
- 6 resources;
- 7 (3) Scenic and open space resources;
- 8 (A) Identify valued scenic resources in the coastal
- 9 zone management area;
- 10 (B) Ensure that new developments are compatible with
- 11 their visual environment by designing and
- 12 locating [~~such~~] those developments to minimize
- 13 the alteration of natural landforms and existing
- 14 public views to and along the shoreline;
- 15 (C) Preserve, maintain, and, where desirable, improve
- 16 and restore shoreline open space and scenic
- 17 resources; and
- 18 (D) Encourage those developments that are not coastal
- 19 dependent to locate in inland areas;
- 20 (4) Coastal ecosystems;





- 1 (A) Exercise an overall conservation ethic, and
- 2 practice stewardship in the protection, use, and
- 3 development of marine and coastal resources;
- 4 (B) Improve the technical basis for natural resource
- 5 management;
- 6 (C) Preserve valuable coastal ecosystems [~~including~~
- 7 ~~reefs,~~] of significant biological or economic
- 8 importance [~~],~~ including reefs, beaches, and
- 9 dunes;
- 10 (D) Minimize disruption or degradation of coastal
- 11 water ecosystems by effective regulation of
- 12 stream diversions, channelization, and similar
- 13 land and water uses, recognizing competing water
- 14 needs; and
- 15 (E) Promote water quantity and quality planning and
- 16 management practices that reflect the tolerance
- 17 of fresh water and marine ecosystems and maintain
- 18 and enhance water quality through the development
- 19 and implementation of point and nonpoint source
- 20 water pollution control measures;
- 21 (5) Economic uses;



- 1 (A) Concentrate coastal dependent development in
- 2 appropriate areas;
- 3 (B) Ensure that coastal dependent development [~~such~~
- 4 ~~as harbors and ports,~~] and coastal related
- 5 development [~~such as visitor industry facilities~~
- 6 ~~and energy generating facilities,~~] are located,
- 7 designed, and constructed to minimize exposure to
- 8 coastal hazards and adverse social, visual, and
- 9 environmental impacts in the coastal zone
- 10 management area; and
- 11 (C) Direct the location and expansion of coastal
- 12 [~~dependent developments~~] development to areas
- 13 [~~presently~~] designated and used for [~~such~~
- 14 ~~developments~~] that development and permit
- 15 reasonable long-term growth at [~~such~~] those
- 16 areas, and permit coastal [~~dependent~~] development
- 17 outside of [~~presently~~] designated areas when:
- 18 (i) Use of [~~presently~~] designated locations is
- 19 not feasible;
- 20 (ii) Adverse environmental effects and risks from
- 21 coastal hazards are minimized; and



- 1 (iii) The development is important to the State's  
2 economy;
- 3 (6) Coastal hazards;
- 4 (A) Develop and communicate adequate information  
5 about [~~storm wave, tsunami, flood, erosion,~~  
6 ~~subsidence, and point and nonpoint source~~  
7 ~~pollution~~] the risks of coastal hazards;
- 8 (B) Control development, including planning and  
9 zoning control, in areas subject to [~~storm wave,~~  
10 ~~tsunami, flood, erosion, hurricane, wind,~~  
11 ~~subsidence, and point and nonpoint source~~  
12 ~~pollution~~] coastal hazards;
- 13 (C) Ensure that developments comply with requirements  
14 of the [~~Federal~~] National Flood Insurance  
15 Program; and
- 16 (D) Prevent coastal flooding from inland projects;
- 17 (7) Managing development;
- 18 (A) Use, implement, and enforce existing law  
19 effectively to the maximum extent possible in  
20 managing present and future coastal zone  
21 development;



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



1 (9) Beach protection;

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

6 (B) Prohibit construction of private [~~erosion-~~  
7 ~~protection~~] shoreline hardening structures  
8 [~~seaward of the shoreline, except when they~~  
9 ~~result in improved aesthetic and engineering~~  
10 ~~solutions to erosion at the sites and do not~~],  
11 including seawalls and revetments, at sites  
12 having sand beaches and at sites where shoreline  
13 hardening structures interfere with existing  
14 recreational and waterline activities;

15 (C) Minimize the construction of public [~~erosion-~~  
16 ~~protection~~] shoreline hardening structures  
17 [~~seaward of the shoreline;~~], including seawalls  
18 and revetments, at sites having sand beaches and  
19 at sites where shoreline hardening structures  
20 interfere with existing recreational and  
21 waterline activities;



- 1           (D) Minimize grading of and damage to coastal dunes;
- 2           [~~(D)~~] (E) Prohibit private property owners from
- 3                     creating a public nuisance by inducing or
- 4                     cultivating the private property owner's
- 5                     vegetation in a beach transit corridor; and
- 6           [~~(E)~~] (F) Prohibit private property owners from
- 7                     creating a public nuisance by allowing the
- 8                     private property owner's unmaintained vegetation
- 9                     to interfere or encroach upon a beach transit
- 10                    corridor; and
- 11       (10) Marine and coastal resources;
- 12           (A) Ensure that the use and development of marine and
- 13                     coastal resources are ecologically and
- 14                     environmentally sound and economically
- 15                     beneficial;
- 16           (B) Coordinate the management of marine and coastal
- 17                     resources and activities to improve effectiveness
- 18                     and efficiency;
- 19           (C) Assert and articulate the interests of the State
- 20                     as a partner with federal agencies in the sound



- 1 management of ocean resources within the United  
2 States exclusive economic zone;
- 3 (D) Promote research, study, and understanding of  
4 ocean and coastal processes, impacts of climate  
5 change and sea level rise, marine life, and other  
6 ocean resources to acquire and inventory  
7 information necessary to understand how [~~ocean~~]  
8 coastal development activities relate to and  
9 impact [~~upon~~] ocean and coastal resources; and
- 10 (E) Encourage research and development of new,  
11 innovative technologies for exploring, using, or  
12 protecting marine and coastal resources."

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

15 1. By amending the definition of "department" to read:

16 "'Department" means the planning department [~~in~~] of the  
17 counties of Kauai, Maui, and Hawaii and the department of  
18 planning and permitting [~~in~~] of the city and county of Honolulu,  
19 or other appropriate agency as designated by the county  
20 councils."

21 2. By amending the definition of "development" to read:



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

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

15           "Development" does not include the following:

- 16           (1) Construction or reconstruction of a single-family  
17           residence that is less than seven thousand five  
18           hundred square feet of floor area, is not situated on  
19           a shoreline parcel or a parcel that is impacted by  
20           waves, storm surges, high tide, or shoreline erosion,  
21           and is not 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;



- 1       (9) Transfer of title to land;
- 2       (10) Creation or termination of easements, covenants, or
- 3           other rights in structures or land;
- 4       ~~[(11) Final subdivision approval; provided that in counties~~
- 5           ~~that may automatically approve tentative subdivision~~
- 6           ~~applications as a ministerial act within a fixed time~~
- 7           ~~of the submission of a preliminary plat map, unless~~
- 8           ~~the director takes specific action, a special~~
- 9           ~~management area use permit if required, shall be~~
- 10          ~~processed concurrently with an application for~~
- 11          ~~tentative subdivision approval or after tentative~~
- 12          ~~subdivision approval and before final subdivision~~
- 13          ~~approval;~~
- 14       ~~(12)~~ (11) Subdivision of land into lots greater than
- 15           twenty acres in size;
- 16       ~~(13)~~ (12) Subdivision of a parcel of land into four or
- 17           fewer parcels when no associated construction
- 18           activities are proposed; provided that any land that
- 19           is so subdivided shall not thereafter qualify for this
- 20           exception with respect to any subsequent subdivision
- 21           of any of the resulting parcels;



1       ~~[(14)]~~ (13)   Installation of underground utility lines and  
2                    appurtenant aboveground fixtures less than four feet  
3                    in height along existing corridors;

4       ~~[(15)]~~ (14)   Structural and nonstructural improvements to  
5                    existing single-family residences, where otherwise  
6                    permissible;

7       ~~[(16)]~~ (15)   Nonstructural improvements to existing  
8                    commercial or noncommercial structures; and

9       ~~[(17)]~~ (16)   Construction, installation, maintenance, repair,  
10                   and replacement of emergency management warning or  
11                   signal devices and sirens;

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

17           3. By amending the definition of "special management area  
18       emergency permit" to read:

19           ""Special management area emergency permit" means an action  
20       by the authority authorizing development in cases of emergency  
21       requiring immediate action to prevent substantial physical harm



1 to persons or property or to allow the reconstruction of  
2 structures damaged by natural hazards to their original form;  
3 provided that [~~such~~] those structures were previously found to  
4 be in compliance with requirements of the [~~Federal~~] National  
5 Flood Insurance Program."

6 4. By repealing the definition of "authority".

7 [~~"Authority" means the county planning commission, except~~  
8 ~~in counties where the county planning commission is advisory~~  
9 ~~only, in which case "authority" means the county council or such~~  
10 ~~body as the council may by ordinance designate. The authority~~  
11 ~~may, as appropriate, delegate the responsibility for~~  
12 ~~administering this part."]~~

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

15 "**§205A-26 Special management area guidelines.** In  
16 implementing this part, the authority shall adopt the following  
17 guidelines for the review of developments proposed in the  
18 special management area:

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



- 1 (A) Adequate access, by dedication or other means, to  
2 publicly owned or used beaches, recreation areas,  
3 and natural reserves is provided to the extent  
4 consistent with sound conservation principles;
- 5 (B) Adequate and properly located public recreation  
6 areas and wildlife preserves are reserved;
- 7 (C) Provisions are made for solid and liquid waste  
8 treatment, disposition, and management [~~which~~  
9 that will minimize adverse effects upon special  
10 management area resources; and
- 11 (D) Alterations to existing land forms and  
12 vegetation, except crops, and construction of  
13 structures shall cause minimum adverse effect to  
14 water resources, beaches, coastal dunes, and  
15 scenic and recreational amenities and [~~minimum~~  
16 ~~danger of~~] minimize impacts from floods, wind  
17 damage, storm surge, landslides, erosion, sea  
18 level rise, siltation, or failure in the event of  
19 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~~] Those adverse effects shall include[~~7~~] but  
8 not be limited to[~~7~~] the potential cumulative  
9 impact of individual developments, each [~~one~~] of  
10 which taken [~~it~~] by 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, community plan, and zoning[~~-~~  
19 ~~Such~~]; provided that a finding of consistency  
20 [~~does~~] shall not preclude concurrent processing



1                   where a general plan, community plan, or zoning  
2                   amendment may also be required.

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

5           (A) Dredging, filling or otherwise altering any bay,  
6           estuary, salt marsh, river mouth, slough or  
7           lagoon;

8           (B) Any development [~~which~~] that would reduce the  
9           size of any beach or other area usable for public  
10          recreation;

11          (C) Any development [~~which~~] that would reduce or  
12          impose restrictions upon public access to tidal  
13          and submerged lands, beaches, portions of rivers  
14          and streams within the special management areas  
15          and the mean high tide line where there is no  
16          beach;

17          (D) Any development [~~which~~] that would substantially  
18          interfere with or detract from the line of sight  
19          toward the sea from the state highway nearest the  
20          coast; and



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

7           SECTION 6. Section 205A-29, Hawaii Revised Statutes, is  
8           amended by amending subsection (a) to read as follows:

9           "(a) The authority in each county, upon consultation with  
10          the central coordinating agency, shall adopt rules under  
11          chapter 91 setting the special management area use permit  
12          application procedures, conditions under which hearings must be  
13          held, and the time periods within which the hearing and action  
14          for special management area use permits shall occur. The  
15          authority shall provide for adequate notice to individuals whose  
16          property rights may be adversely affected and to persons who  
17          have requested in writing to be notified of special management  
18          area use permit hearings or applications. The authority shall  
19          also provide public notice [~~statewide~~] that is, at a minimum,  
20          circulated throughout the county at least twenty days in advance





1 of the hearing. The authority may require a reasonable filing  
2 fee which shall be used for the purposes set forth herein.

3 Any rule adopted by the authority shall be consistent with  
4 the objectives, policies, and special management area guidelines  
5 provided in this chapter. Action on the special management  
6 permit shall be final unless otherwise mandated by court order."

7 SECTION 7. Section 205A-41, Hawaii Revised Statutes, is  
8 amended by adding a new definition to be appropriately inserted  
9 and to read as follows:

10 "Department" means the planning department of the counties  
11 of Kauai, Maui, and Hawaii and the department of planning and  
12 permitting of the city and county of Honolulu, or other  
13 appropriate agency as designated by the county councils."

14 SECTION 8. Section 205A-43, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) Setbacks along shorelines are established of not less  
17 than [~~twenty feet and not more than~~] forty feet inland from the  
18 shoreline. The department shall adopt rules pursuant to chapter  
19 91, and shall enforce the shoreline setbacks and rules  
20 pertaining thereto."



1 SECTION 9. 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;~~] or public facility, including any facility  
15 owned by a public utility that is regulated pursuant  
16 to chapter 269, that does not fix the shoreline, under  
17 an emergency authorization issued by the authority;  
18 provided that the structure or public facility is at  
19 risk of immediate damage from shoreline erosion[+] and  
20 the authorization does not exceed three years;



1 (3) Other structures or activities; provided that no  
2 person or agency has requested a public hearing within  
3 twenty-five calendar days after public notice of the  
4 application; or

5 (4) Maintenance, repair, reconstruction, and minor  
6 additions or alterations of legal boating, maritime,  
7 or watersports recreational facilities, [~~which~~] that  
8 result in little or no interference with natural  
9 shoreline processes."

10 SECTION 10. Section 205A-44, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12 "(b) Except as provided in this section, structures are  
13 prohibited in the shoreline area without a variance pursuant to  
14 this part. Structures in the shoreline area shall not need a  
15 variance if:

- 16 (1) They were completed prior to June 22, 1970;
- 17 (2) They received either a building permit, board  
18 approval, or shoreline setback variance prior to June  
19 16, 1989;
- 20 (3) They are outside the shoreline area when they receive  
21 either a building permit or board approval;



1 (4) They are necessary for or ancillary to continuation of  
2 existing agriculture or aquaculture in the shoreline  
3 area on June 16, 1989;

4 (5) They are minor structures permitted under rules  
5 adopted by the department which do not affect beach  
6 processes or artificially fix the shoreline and do not  
7 interfere with public access or public views to and  
8 along the shoreline; or

9 (6) Work being done consists of maintenance, repair,  
10 [~~reconstruction,~~] and minor additions or alterations  
11 of legal boating, maritime, or watersports  
12 recreational facilities, which are publicly owned, and  
13 which result in little or no interference with natural  
14 shoreline processes;

15 provided that permitted structures may be repaired, but shall  
16 not be enlarged, rebuilt, or replaced within the shoreline area  
17 without a variance."

18 SECTION 11. Section 205A-46, Hawaii Revised Statutes, is  
19 amended as follows:

20 1. By amending subsection (a) to read:



1           "(a) A variance may be granted for a structure or activity  
2 otherwise prohibited in this part if the authority finds in  
3 writing, based on the record presented, that the proposed  
4 structure or activity is necessary for or ancillary to:

5           (1) Cultivation of crops;

6           (2) Aquaculture;

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

11          (4) Drainage;

12          (5) Boating, maritime, or watersports recreational  
13 facilities;

14          (6) Facilities or improvements by public agencies or  
15 public utilities regulated under chapter 269;

16          (7) Private facilities or improvements that are clearly in  
17 the public interest;

18          (8) Private facilities or improvements [~~which~~] that will  
19 [~~neither~~] not adversely affect beach processes [~~nor~~],  
20 result in flanking shoreline erosion, or artificially  
21 fix the shoreline; provided that the authority [~~also~~



1 ~~finds that]~~ may consider any hardship that will result  
2 to the applicant if the facilities or improvements are  
3 not allowed within the shoreline area;

- 4 (9) Private facilities or improvements that may  
5 artificially fix the shoreline; provided that the  
6 authority [~~also finds that shoreline erosion is likely~~  
7 ~~to cause]~~ may consider hardship to the applicant if  
8 the facilities or improvements are not allowed within  
9 the shoreline area[, ~~and the authority imposes~~  
10 ~~conditions to prohibit any structure seaward of the~~  
11 ~~existing shoreline unless it is clearly in the public~~  
12 ~~interest; or]~~ provided further that a variance to  
13 artificially fix the shoreline shall not be granted in  
14 areas with sand beaches or where artificially fixing  
15 the shoreline may interfere with existing recreational  
16 and waterline activities unless the granting of the  
17 variance is clearly demonstrated to be in the interest  
18 of the general public; or

- 19 (10) Moving of sand from one location seaward of the  
20 shoreline to another location seaward of the  
21 shoreline; provided that the authority also finds that



1 moving of sand will not adversely affect beach  
2 processes, will not diminish the size of a public  
3 beach, and will be necessary to stabilize an eroding  
4 shoreline."

5 2. By amending subsection (c) to read:

6 "(c) No variance shall be granted unless appropriate  
7 conditions are imposed:

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

10 (2) To minimize risk of adverse impacts on beach  
11 processes;

12 (3) To minimize risk of structures failing and becoming  
13 loose rocks, sharp or otherwise dangerous debris, or  
14 rubble on public property; and

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

17 SECTION 12. Section 205A-62, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§205A-62 Duties and responsibilities of the lead agency.**

20 The lead agency shall have the following duties and  
21 responsibilities:



- 1 (1) Coordinate overall implementation of the plan, giving  
2 special consideration to the plan's priority  
3 recommendations;
- 4 (2) Review and periodically update the plan;
- 5 (3) Coordinate the development of state agency work plans  
6 to implement the ocean resources management plan. The  
7 work plans shall be revised on a biennial basis and  
8 coordinated with the budget process. State agencies  
9 with responsibilities relating to marine and coastal  
10 zone management include but are not limited to:
- 11 (A) The department of agriculture;
- 12 (B) The department of business, economic development,  
13 and tourism;
- 14 (C) The department of defense;
- 15 (D) The department of education;
- 16 [~~(D)~~] (E) The department of health;
- 17 [~~(E)~~] (F) The department of land and natural  
18 resources;
- 19 [~~(F)~~] (G) The department of public safety;
- 20 [~~(G)~~] (H) The department of transportation; and
- 21 [~~(H)~~] (I) The University of Hawaii;





- 1           (4) Ensure that state agency work plans are closely
- 2                   coordinated with the work plans of relevant federal
- 3                   and county agencies;
- 4           (5) Analyze, resolve conflicts between, and prioritize, in
- 5                   cooperation with relevant agencies and as part of the
- 6                   work plan development process, the sector-specific
- 7                   recommendations included in the plan;
- 8           (6) Coordinate exclusive economic zone and other marine-
- 9                   related issues with state and county agencies;
- 10          (7) Provide technical assistance to the agencies on policy
- 11                   and issue-related matters regarding marine and coastal
- 12                   resources management;
- 13          (8) Coordinate marine and coastal education activities;
- 14                   and
- 15          (9) Adopt rules pursuant to chapter 91 to carry out the
- 16                   purposes of this part."

17           SECTION 13. This Act does not affect rights and duties  
18 that matured, penalties that were incurred, and proceedings that  
19 were begun before its effective date.

20           SECTION 14. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

1 SECTION 15. This Act shall take effect upon its approval.

APPROVED this 13 day of SEP, 2020

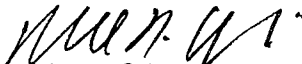



GOVERNOR OF THE STATE OF HAWAII

**THE SENATE OF THE STATE OF HAWAI'I**

Date: July 10, 2020  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2020.

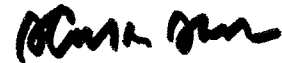
  
President of the Senate

  
Clerk of the Senate

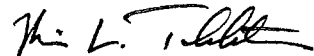
THE HOUSE OF REPRESENTATIVES OF THE  
STATE OF HAWAII

Date: July 6, 2020  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020.



Scott K. Saiki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives

A Bill for an Act Relating to Coastal Zone Management.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1. Findings and Purpose.** The legislature finds that Congress has enacted the Coastal Zone Management Act of 1972, Public Law 92-583, as amended, which recognizes the national interest in the effective planning, management, beneficial use, protection, and development of the coastal zones of the several states.

It is a purpose of this Act, to authorize a Hawaii state coastal zone management program that complies with the requirements of the National Coastal Zone Management Act. However, the controlling purpose of this Act is to provide for the effective management, beneficial use, protection, and development of the coastal zone. Where Hawaii's unique geographical and political circumstances result in the necessity of choosing between the intent of the federal legislation and specific requirements the purpose of this Act shall control.

The legislature further finds that Hawaii's environment is both undermanaged and overregulated; that new regulatory mechanisms must not be added onto, but rather combined with, the existing systems; and that the counties have shown their ability and willingness to play a constructive role in coastal zone management by their actions under chapter 205A, part II, Hawaii Revised Statutes.

**SECTION 2. Repeal.** Part I of chapter 205A, Hawaii Revised Statutes, is repealed.

**SECTION 3.** Chapter 205A, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

**"PART I. COASTAL ZONE MANAGEMENT**

**Sec. 205A-1 Definitions.** As used in this part, unless the context otherwise requires:

- (1) "Agency" means any agency, board, commission, department, or

officer of a county government or the State government;

- (2) "Authority" means the authority administering chapter 205A, Hawaii Revised Statutes, at the time of the effective date of this Act.
- (3) "Coastal zone management area" means the special management area after compliance pursuant to section 205A-23 of this chapter and as defined in part II of this chapter.
- (4) "Coastal zone management program" means the coastal zone management program as provided by this part;
- (5) "Department" means the department of planning and economic development.
- (6) "Development" means the development as defined in part II of this chapter.
- (7) "Land" means the earth, water, and air above, below, or on the surface;
- (8) "Lead agency" means the department of planning and economic development;
- (9) "Person" means an individual, corporation, or partnership, and an organization or association, whether or not incorporated.
- (10) "Shoreline" means the shoreline as defined in part II of this chapter.

**Sec. 205A-2 Coastal Zone Management Program; Objectives and policies.**

(a) The objectives and policies in this section shall apply to both parts I and II of this chapter.

(b) Objectives.

- (1) Recreational resources;
  - (A) Provide coastal recreational opportunities accessible to the public.
- (2) Historic resources;
  - (A) Protect, preserve, and, where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
- (3) Scenic and open space resources;
  - (A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.
- (4) Coastal ecosystems;
  - (A) Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
- (5) Economic uses;
  - (A) Provide public or private facilities and improvements important to the State's economy in suitable locations.
- (6) Coastal hazards;
  - (A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.
- (7) Managing development;
  - (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

(c) Policies.

- (1) Recreational resources;

- (A) Improve coordination and funding of coastal recreation planning and management; and
- (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
  - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
  - (ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;
  - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
  - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
  - (v) Encouraging expanded public recreational use of county, State, and federally owned or controlled shoreline lands and waters having recreational value;
  - (vi) Adopting water quality standards and regulating point and non-point sources of pollution to protect and where feasible, restore the recreational value of coastal waters;
  - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, artificial reefs for surfing and fishing; and
  - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of section 46-6.
- (2) Historic resources;
  - (A) Identify and analyze significant archaeological resources;
  - (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
  - (C) Support State goals for protection, restoration, interpretation, and display of historic resources.
- (3) Scenic and open space resources;
  - (A) Identify valued scenic resources in the coastal zone management area;
  - (B) Insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
  - (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

- (D) Encourage those developments which are not coastal dependent to locate in inland areas.
- (4) Coastal Ecosystems;
  - (A) Improve the technical basis for natural resource management;
  - (B) Preserve valuable coastal ecosystems of significant biological or economic importance;
  - (C) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
  - (D) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate State water quality standards.
- (5) Economic uses;
  - (A) Concentrate in appropriate areas the location of coastal dependent development necessary to the State's economy;
  - (B) Insure that coastal dependent development such as harbors and ports, visitor industry facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
  - (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
    - (i) Utilization of presently designated locations is not feasible;
    - (ii) Adverse environmental effects are minimized; and
    - (iii) Important to the State's economy.
- (6) Coastal hazards;
  - (A) Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence hazard;
  - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard;
  - (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
  - (D) Prevent coastal flooding from inland projects.
- (7) Managing development;
  - (A) Effectively utilize and implement existing law to the maximum extent possible in managing present and future coastal zone development;
  - (B) Facilitate timely processing of application for development permits and resolve overlapping or conflicting permit requirements; and
  - (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle



and in terms understandable to the general public to facilitate public participation in the planning and review process.

**Sec. 205A-3 Lead Agency.** The lead agency shall:

- (1) Receive, disburse, use, expend, and account for all funds that are made available by the United States and the State for the coastal zone management program;
- (2) Provide support and assistance in the administration of the state coastal zone management program;
- (3) Review federal programs, permits, licenses and development proposals for consistency with the coastal zone management program;
- (4) In consultation with the counties and the general public prepare guidelines in furtherance of the objectives and policies of the Act to be submitted 20 days prior to the convening of the 1978 Regular Session of the Legislature for review, modification and enactment by the Legislature.
- (5) Conduct a continuing review of the administration of the coastal zone management program and of the compliance of State and county agencies;
- (6) Facilitate public participation in the coastal zone management program;
- (7) Review State programs within the coastal zone management area from the shoreline to the seaward limit of the State's jurisdiction for consistency with the coastal zone management program; and
- (8) Prepare an annual report to the governor and the legislature which shall include recommendations for enactment of any legislation necessary to require any agency to comply with the objectives and policies of this chapter and the guidelines enacted by the legislature.

**Sec. 205A-4 Implementation of objectives, policies, and guidelines.** (a) In implementing the objectives of the coastal zone management program full consideration shall be given to ecological, cultural, historic, and esthetic values as well as to needs for economic development.

(b) The objectives and policies of this chapter and the guidelines enacted by the legislature shall be binding upon actions within the coastal zone management area by all agencies.

**Sec. 205A-5 Compliance.** Within two years of the effective date of this chapter, all agencies shall amend their regulations, as may be necessary, to comply with the objectives, and policies of this chapter and the guidelines enacted by the Legislature.

**Sec. 205A-6 Cause of action.** (a) Subject to chapters 661 and 662, Hawaii Revised Statutes, any person or agency may commence a civil action alleging that any agency:

- (1) Is not in compliance with one or more of the objectives, policies, and guidelines provided or authorized by this Act; or
- (2) Has failed to perform any act or duty required to be performed under this Act; or

(3) In exercising any duty required to be performed under this Act, has not complied with the provisions of this Act.

(b) In any action brought under this section, the department, if not a party, shall intervene as a matter of right.

(c) A court, in any action brought under this section, shall have jurisdiction to provide any relief as may be appropriate, including a temporary restraining order or preliminary injunction.

(d) Any action brought under this section shall be commenced within sixty days of the act which is the basis of the action.

(e) Nothing in this section shall restrict any right that any person may have to assert any other claim or bring any other action."

SECTION 4. Section 5, Act 176, Session Laws of Hawaii 1975, is amended to read as follows:

"SECTION 5. This part shall take effect upon its approval."

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

"**Sec. 205A-21 Findings and Purposes.** The legislature finds that, special controls on developments within an area along the shoreline are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided. The legislature finds and declares that it is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii."

SECTION 6. Section 205A-22, Hawaii Revised Statutes, is amended by amending one definition and adding three new definitions to be appropriately designated and to read:

"(1) "Authority" means the authority administering chapter 205A, Hawaii Revised Statutes, at the time of the effective date of this Act.

(7) "Lead agency" means the department of planning and economic development.

(8) "Coastal zone management area" means the special management area after compliance pursuant to section 205A-23 of this part.

(9) "Coastal zone management program" means the coastal zone management program as provided in this chapter."

SECTION 7. Section 205A-23, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 205A-23 County Area Boundaries.** (a) Each county shall, after holding public hearings, provide for the delineation of the boundary of the special management area of the county on maps of appropriate scale. Copies of such maps shall be filed with the authority prior to December 1, 1975. The special management area in each county shall be as shown on such maps filed with the authority as of the effective date of this Act.

(b) Within two years of the effective date of this Act, the authority shall review and amend as necessary its special management area boundaries, subject to lead agency review as to compliance with the objectives and policies of this

chapter and the guidelines enacted by the legislature. Copies of the amended maps shall be filed with the authority and the lead agency.

(c) After determination by the lead agency that there is compliance pursuant to section 205A-5, the special management areas shall be the coastal zone management areas.”

SECTION 8. Section 205A-24, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 205A-25, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 205A-26, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 205A-26 Guidelines.** (a) In implementing this part, the authority shall adopt the following guidelines for the review of developments proposed in the special management area:

- (1) All development in the special management area shall be subject to reasonable terms and conditions set by the authority in order to ensure:
  - (A) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles.
  - (B) Adequate and properly located public recreation areas and wildlife preserves are reserved.
  - (C) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources.
  - (D) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.
- (2) No development shall be approved unless the authority has first found:
  - (A) That the development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is clearly outweighed by public health and safety. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options; and
  - (B) That the development is consistent with the findings and policies set forth in this part.
- (3) The authority shall seek to minimize, where reasonable:
  - (A) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.
  - (B) Any development which would reduce the size of any beach or other area usable for public recreation.
  - (C) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management areas and the mean high tide line where there is no beach.
  - (D) Any development which would substantially interfere with or

detract from the line of sight toward the sea from the state highway nearest the coast.

- (E) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.

(b) Guidelines adopted by the authority shall be consistent with the coastal zone management program objectives, and policies of this chapter and the guidelines enacted by the Legislature.”

SECTION 11. Section 205A-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

“(a) The authority in each county shall adopt, prior to December 1, 1975 and may amend pursuant to chapter 91, the rules, regulations and procedures necessary for application of permits and hearings. The authority may require a reasonable filing fee. The fee collected shall be used for the purposes set forth herein.”

SECTION 12. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 13. This Act shall take effect upon its approval.

(Approved June 8, 1977.)

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\*Edited accordingly.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,

Plaintiff,

vs.

JAMES O'SHEA AND DENISE  
O'SHEA as Trustees of the James and  
Denise O'Shea Trust, JAMES O'SHEA,  
individually and DENISE O'SHEA,  
individually, JOHN AND JANE DOES 1  
– 10,

Defendants.

---

JAMES O'SHEA AND DENISE  
O'SHEA as Trustees of the James and  
Denise O'Shea Trust, JAMES O'SHEA,  
individually and DENISE O'SHEA,  
individually,

Third-Party Plaintiffs,

vs.

RUPERT T. OBERLOHR individually;  
RUPERT T. OBERLOHR as Trustee of  
the Rupert Oberlohr Trust; Doe  
Defendants 1-100,

Third-Party Defendant.

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CIVIL NO. 17-1-1543-09 JPC  
(Other Civil Action, Injunctive Relief)  
(Environmental Court)

CERTIFICATE OF SERVICE

No Trial Date Set.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was duly served upon the following parties through the court's e-filing system, JEFS, electronic mail, and/or U.S. Mail, postage prepaid:

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DATED: Honolulu, Hawaii, May 21, 2021.

DAMON KEY LEONG KUPCHAK HASTERT

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as Trustees of the James and Denise O'Shea  
Trust, JAMES O'SHEA, individually and  
DENISE O'SHEA, individually