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**Chapter 6 Appendix C**

**State Law – Hawai‘i Coastal Zone Management Act**

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**CHAPTER 205A**

**COASTAL ZONE MANAGEMENT**

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### **Cross References**

Kaho`olawe island reserve, see chapter 6K.

## Law Journals and Reviews

Native Hawaiian Cultural Practices Under Threat. I HBJ No. 13, at pg. 1.

Timesharing in the 1990s. I HBJ No. 13, at pg. 89.

Sandy Beach Defense Fund v. City and County of Honolulu: The Sufficiency of Legislative Hearings in an Administrative Setting. 12 UH L. Rev. 499.

Shoreline Setback Regulations and the Takings Analysis. 13 UH L. Rev. 1.

The Lum Court, Land Use, and the Environment: A Survey of Hawai`i Case Law 1983 to 1991. 14 UH L. Rev. 119.

Public Access Shoreline Hawaii v. Hawaii County Planning Commission: The Affirmative Duty to Consider the Effect of Development on Native Hawaiian Gathering Rights. 16 UH L. Rev. 303.

## Case Notes

Existence of chapter does not preclude private right of action to force beach access. 65 H. 383, 652 P.2d 1130.

Chapter requires county planning commission to give cultural interests asserted by public interest group "full consideration" and obligates commission to "preserve and protect" native Hawaiian rights to the extent feasible when issuing SMA permits. 79 H. 425, 903 P.2d 1246.

Chapter does not apply to any development, existing or planned, for which permits listed in L 1975, c 176, §3 were issued or ordinances were passed prior to December 1, 1975. 4 H. App. 304, 666 P.2d 177.

## PART I. COASTAL ZONE MANAGEMENT

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

"Agency" means any agency, board, commission, department, or officer of a county government or the state government, including the authority as defined in part II;

"Coastal zone management area" means all lands of the State and the area extending seaward from the shoreline to the limit of the State's police power and management authority, including the United States territorial sea;

"Coastal zone management program" means the comprehensive statement in words, maps, or other permanent media of communication, prepared, approved for submission, and amended by the State and approved by the United States government pursuant to Public Law No. 92-583, as amended, and the federal regulations adopted pursuant thereto, which describes objectives, policies, laws, standards, and procedures to guide and regulate public and private uses in the coastal zone management area, provided however the "coastal zone management program" is consistent with the intent, purpose, and provisions of this chapter;

"Land" means the earth, water, and air above, below, or on the surface;

"Lead agency" means the office of planning;

"Person" means an individual, corporation, or partnership, and an organization or association, whether or not incorporated;

"Public advisory body" means the advisory body established in section 205A-3.5;

"Shoreline" means 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. [L 1977, c 188, pt of §3; am L 1979, c 200, §1; am L 1983, c 124, §7; am L 1986, c 258, §2; am L 1987, c 336, §7; am L 1988, c 352, §4; am L 1989, c 356, §4; am L 1990, c 126, §7; am L 1993, c 91, §2; am L 1995, c 104, §4; am L 1996, c 299, §3; am L 2001, c 169, §2]

HRS 0205A-0001 ANNOTATIONS

**Note**

Former Part I, Long Range Goals, §§205A-1 to 3, repealed by L 1977, c 188, §2.

**§205A-2 Coastal zone management program; objectives and policies.** (a) The objectives and policies in this section shall apply to all parts 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 manmade historic and prehistoric 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, including reefs, 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 tsunamis, storm waves, stream flooding, erosion, subsidence, and pollution.

(7) Managing development;

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

(8) Public participation;

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

(9) Beach protection;

(A) Protect beaches for public use and recreation.

(10) Marine resources;

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

(c) Policies.

(1) Recreational resources;

(A) Improve coordination and funding of coastal recreational 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, fishponds, and sand 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) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;

(vi) Adopting water quality standards and regulating point and nonpoint 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, and 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, and county authorities; 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) Ensure 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 that are not coastal dependent to locate in inland areas.

(4) Coastal ecosystems;

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

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

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

(D) 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

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

(5) Economic uses;

(A) Concentrate coastal dependent development in appropriate areas;

(B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as 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) Use of presently designated locations is not feasible;

(ii) Adverse environmental effects are minimized; and

(iii) The development is important to the State's economy.

(6) Coastal hazards;

(A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;

(B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;

(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) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;

(B) Facilitate timely processing of applications 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 public to facilitate public participation in the planning and review process.

(8) Public participation;

(A) Promote public involvement in coastal zone management processes;

(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and

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

(9) Beach protection;

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

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

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

(10) Marine resources;

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

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

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

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

(E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources. [L 1977, c 188, pt of §3; am L 1993, c 258, §1; am L 1994, c 3, §1; am L 1995, c 104, §5; am L 2001, c 169, §3]

HRS 0205A-0002 ANNOTATIONS

#### **Law Journals and Reviews**

**Beach Access: A Public Right?** 23 HBJ 65.

**§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 coastal zone management program;

(3) Review federal programs, federal permits, federal licenses, and federal development proposals for consistency with the coastal zone management program;

(4) Consult with the counties and the public in preparing guidelines to further specify and clarify the objectives and policies of this chapter to be submitted twenty days prior to

the convening of any regular session of the legislature for review, modification, or 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 with the objectives and policies of this chapter;

(6) Facilitate public participation in the coastal zone management program, including the maintenance of a public advisory body to identify coastal management problems and to provide policy advice and assistance to the lead agency;

(7) Prepare and periodically update a plan for use of coastal zone management funds to resolve coastal problems and issues that are not adequately addressed by existing laws and rules;

(8) Advocate agency compliance with chapter 205A;

(9) Monitor the coastal zone management-related enforcement activities of the state and county agencies responsible for the administration of the objectives and policies of this chapter;

(10) 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 any guidelines enacted by the legislature; and

(11) Coordinate the implementation of the ocean resources management plan. [L 1977, c 188, pt of §3; am L 1979, c 200, §2; am L 1989, c 356, §5; am L 1993, c 258, §2; am L 1995, c 104, §6; am L 2001, c 169, §4]

**§205A-3.5 Public advisory body; establishment; composition.** (a) There is established within the lead agency a public advisory body that shall provide support to the lead agency as set forth in subsection (f).

(b) The public advisory body shall be composed of not more than twelve members who shall be appointed by the director of the lead agency for staggered terms of not more than three years. These members shall be selected with consideration given to the following criteria:

(1) Statewide geographic distribution; and

(2) Balanced representation from among the following interests: business, environment, practitioners of native Hawaiian culture, terrestrial and marine commerce, recreation, research, and tourism.

The lead agency shall undertake widespread solicitation of applications from persons who are interested in serving on the public advisory body.

(c) The public advisory body shall select its own chair from among its members.

(d) The public advisory body may establish working groups as needed. Working group members may include persons who are not members of the public advisory body.

(e) Public advisory body and working group members shall serve without compensation.

(f) The public advisory body shall support the lead agency by providing advice regarding marine and coastal zone management planning, coordination, and facilitation of functions of the coastal zone management program. It shall:

(1) Evaluate the state coastal zone management program, including activity of the network agencies, and make recommendations for improvements;

(2) Advocate for the program to the public and the executive and legislative branches of government; and

(3) Advocate, provide for, and act upon citizen input.

(g) The public advisory body shall work toward the implementation of an integrated and comprehensive management system for marine and coastal zone resources, consistent with the objectives and policies established in this chapter. [L 1995, c 104, §3; am L 2001, c 169, §5]

#### **§205A-4 Implementation of objectives, policies, and guidelines.**

(a) In implementing the objectives of the coastal zone management program, the agencies shall give full consideration to ecological, cultural, historic, esthetic, recreational, scenic, and open space values, and coastal hazards, as well as to needs for economic development.

(b) The objectives and policies of this chapter and any guidelines enacted by the legislature shall be binding upon actions within the coastal zone management area by all agencies, within the scope of their authority. [L 1977, c 188, pt of §3; am L 1979, c 200, §3; am L 1989, c 356, §6]

**§205A-5 Compliance.** (a) All agencies shall ensure that their rules comply with the objectives and policies of this chapter and any guidelines enacted by the legislature.

(b) All agencies shall enforce the objectives and policies of this chapter and any rules adopted pursuant to this chapter. [L 1977, c 188, pt of §3; am L 1979, c 200, §4; am L 1989, c 356, §7; am L 1993, c 258, §3]

**§205A-6 Cause of action.** (a) Subject to chapters 661 and 662, 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 chapter within the special management area and the waters from the shoreline to the seaward limit of the State's jurisdiction; or

(2) Has failed to perform any act or duty required to be performed under this chapter; or

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

(b) In any action brought under this section, the lead agency, if not a party, may 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. [L 1977, c 188, pt of §3; am L 1979, c 200, §5]

**Case Notes**

Judicial intervention under this section should not precede resolution of issues by administrative agency. 69 H. 81, 734 P.2d 161.

Section allowed plaintiff to bring generic declaratory action under §632-1 without the need to proceed under this section. 75 H. 237, 858 P.2d 726.

**PART II. SPECIAL MANAGEMENT AREAS**

**§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. [L 1975, c 176, pt of §1; am L 1977, c 188, §5]

**Note**

Part heading amended by L 1979, c 200, §6.

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ANNOTATIONS ABOVE RELATE TO ARTICLE, CHAPTER, OR PART HEADING;

ANNOTATIONS BELOW ARE FOR SECTION ONLY.

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**Law Journals and Reviews**

The Protection of Individual Rights Under Hawai`i's Constitution. 14 UH L. Rev. 311.

**§205A-22 Definitions.** As used in this part, unless the context otherwise requires:

"Applicant" means any individual, organization, partnership, or corporation, including any utility and any agency of government.

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

"Department" means the planning department in the counties of Kauai, Maui, and Hawaii, and the department of land utilization in the city and county of Honolulu, or other appropriate agency as designated by the county councils.

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

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

"Development" does not include the following:

- (1) Construction of a single-family residence that is not part of a larger development;
- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;

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

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

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

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

(8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;

(9) Transfer of title to land;

(10) Creation or termination of easements, covenants, or other rights in structures or land;

(11) Subdivision of land into lots greater than twenty acres in size;

(12) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

(13) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;



(14) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible; and

(15) Nonstructural improvements to existing commercial structures;

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

"Special management area" means the land extending inland from the shoreline as delineated on the maps filed with the authority as of June 8, 1977, or as amended pursuant to section 205A-23.

"Special management area emergency permit" means an action by the authority authorizing development in cases of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form; provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program.

"Special management area minor permit" means an action by the authority authorizing development the valuation of which is not in excess of \$125,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Special management area use permit" means an action by the authority authorizing development the valuation of which exceeds \$125,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Structure" includes but is not limited to any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

"Valuation" shall be determined by the authority and means the estimated cost to replace the structure in kind based on current replacement costs, or in the cases of other development as defined above, the fair market value of the development. [L 1975, c 176, pt of §1; am L 1977, c 188, §6; am L 1979, c 200,

§7; am L 1982, c 126, §1; am L 1983, c 124, §8; am L 1984, c 113, §1; am L 1991, c 129, §1; am L 1993, c 258, §4; am L 2001, c 169, §6]

HRS 0205A-0022 ANNOTATIONS

### **Attorney General Opinions**

"Special management area" must be shoreline or coastal water related land. Att. Gen. Op. 75-18.

### **Case Notes**

Where no express procedure provided in Maui charter or Maui special management area rules for appeal of Maui planning director's decision on a minor permit application to the Maui planning commission, and commission delegated authority to render final decision on minor permit applications to director pursuant to this section, director's decision not to process developer's application was a final decision equivalent to a denial of the application and was thus appealable under §91-14(a). 88 H. 108, 962 P.2d 367.

Where defendant's tour boat operation changed the intensity of use of water in the Hanalei special management area, defendant's tour boat operation constituted a "development", within the meaning of this section, that was not exempt from the coastal zone management act or special management area rules. 89 H. 400, 974 P.2d 40.

Special management area minor permit issued by county to public utility invalid and public utility required to obtain special management area use permit for its cellular telephone tower where county board of appeals finding that valuation of tower development did not exceed \$125,000 was clearly erroneous. 90 H. 384, 978 P.2d 822.

Where land lease did not constitute a "development" under this chapter, trial court erred in ruling that valuation of cellular telephone tower development must include value of the land lease; instead, valuation consisted of the "current replacement cost" of the structures built. 90 H. 384, 978 P.2d 822.

"Development" includes that which is planned. 4 H. App. 304, 666 P.2d 177.

**§205A-23 County special management area boundaries.** (a) The special management area in each county shall be as shown on such maps filed with the authority as of June 8, 1977.

(b) On or before December 31, 1979, the authority shall review and pursuant to chapter 91, amend as necessary its special management area boundaries, to further the objectives and policies of this chapter, provided that any contraction of the special management area boundaries as provided for in subsection (a), shall be subject to lead agency review and determination as to compliance with the objectives and policies of this chapter and any guidelines enacted by the legislature. Copies of the existing and amended maps shall be filed with the authority and the lead agency.

(c) Nothing in this chapter shall preclude the authority from amending its special management area boundary at any point in time; provided that the procedures and requirements outlined in subsection (b) shall be complied with and provided further that any future special management area boundary adjustments shall be restricted to the coastal zone management area. [L 1975, c 176, pt of §1; am L 1977, c 188, §7; am L 1979, c 200, §8]

#### **Attorney General Opinions**

Counties must reasonably determine whether lands, located in excess of one hundred yards from water to be protected, are lands the uses of which will have significant impact on the water. Att. Gen. Op. 75-18.

**§§205A-24, 25 REPEALED.** L 1977, c 188, §§8, 9.

**§205A-26 Special management area guidelines.** 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; and

(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, wind damage, storm surge, 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 minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. 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;

(B) That the development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature; and

(C) That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

(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; and

(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. [L 1975, c 176, pt of §1; am L 1977, c 188, §10; am L 1979, c 200, §9; am L 1984, c 113, §2; am L 1994, c 3, §2]

HRS 0205A-0026 ANNOTATIONS

#### **Case Notes**

Grant of permit overturned because findings required by paragraph (2) not made. 65 H. 506, 654 P.2d 874; 68 H. 135, 705 P.2d 1042.

Where Kihei-Makena community plan was part of Maui general plan and county planning director determined that developer's proposed action was inconsistent with community plan, special management area permit application properly denied by director pursuant to paragraph (2)(C). 88 H. 108, 962 P.2d 367.

Not violated where requisite findings were contained in committee report recommending approval of development. 6 H. App. 540, 735 P.2d 950.

Absent a finding that impact on public facilities would result in a substantial adverse environmental or ecological effect, or render the development inconsistent with objectives, policies, and guidelines of Coastal Zone Management Act, planning commission's finding that the development would have significant adverse effects and impact on existing highway system in area of the development did not provide a sufficient basis for denying permit petition. 9 H. App. 377, 842 P.2d 648.

Even if the development was shown to have a substantial adverse effect in accordance with the statute, planning commission was required under paragraph (2)(A) to determine whether that effect could be practicably minimized and, when minimized, whether the effect was clearly outweighed by public health, safety, or compelling public interests. 9 H. App. 377, 842 P.2d 648.

Paragraph (3)(D) mandated planning commission to protect and preserve more than just the view of the shoreline; the statute, by its very language, is intended to protect the view toward the sea even though the "shoreline" cannot be seen either because of intervening development or natural growth. 9 H. App. 377, 842 P.2d 648.

**§205A-27 Designation of special management area authority.** The authority is designated the special management area authority and is authorized to carry out the objectives, policies and procedures of this part. [L 1975, c 176, pt of §1; am L 1979, c 200, §10]

**§205A-28 Permit required for development.** No development shall be allowed in any county within the special management area without obtaining a permit in accordance with this part. [L 1975, c 176, pt of §1; am L 1979, c 200, §11]

HRS 0205A-0028 ANNOTATIONS

#### **Law Journals and Reviews**

Timesharing in the 1990s. I HBJ No. 13, at pg. 89.

**§205A-29 Special management area use permit procedure.** (a) The authority in each county, upon consultation with the central coordinating agency, shall adopt rules under chapter 91 setting the special management area use permit application procedures, conditions under which hearings must be held, and the time periods within which the hearing and action for special management area use permits shall occur. The authority shall provide for adequate notice to individuals whose property rights may be adversely affected and to persons who have requested in writing to be notified of special management area use permit hearings or applications. The authority shall also provide public notice statewide at least twenty days in advance of the hearing. The authority may require a reasonable filing fee which shall be used for the purposes set forth herein.

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

(b) No agency authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received in accordance

with the procedures adopted pursuant to this part. For the purposes of this subsection, county general plan, state land use district boundary amendments, and zoning changes are not permits. [L 1975, c 176, pt of §1; am L 1977, c 188, §11; am L 1979, c 200, §12; am L 1989, c 356, §8; am L 1998, c 2, §62]

HRS 0205A-0029 ANNOTATIONS

### **Law Journals and Reviews**

**Sandy Beach Defense Fund v. City and County of Honolulu: The Sufficiency of Legislative Hearings in an Administrative Setting.** 12 UH L. Rev. 499.

### **Case Notes**

Section does not require that notice of a meeting rescheduled for later date to be provided within time limit on original notice. 64 H. 431, 643 P.2d 55.

City council not subject to chapter 91 contested case procedures when acting upon shoreline management act use permits. 70 H. 361, 773 P.2d 250.

**§205A-30 Emergency and minor permits.** Each county authority shall provide specific procedures consistent with this part for the issuance of special management area emergency permits or special management area minor permits, pursuant to the procedural requirements within this part, and judicial review from the grant and denial thereof. The lead agency shall file notice of special management area minor permits in the next available issue of the periodic bulletin of the office of environmental quality control. [L 1975, c 176, pt of §1; am L 1979, c 200, §13; am L 2001, c 169, §7]

**§205A-31 REPEALED.** L 1979, c 200, §14.

**§205A-32 Penalties.** (a) Any person who violates any provision of part II or part III shall be liable as follows:

- (1) For a civil fine not to exceed \$100,000; or
- (2) For the cost of returning the affected environment or ecology within the coastal management area to the condition existing before the violation.

(b) In addition to any other penalties, any person who is violating any provision of part II or part III shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.

(c) Any civil fine or other penalty provided under this section may be imposed by the circuit court or may be imposed by the department after an opportunity for a hearing under chapter 91. Imposition of a civil fine shall not be a prerequisite to any civil fine or other injunctive relief ordered by the circuit court. [L 1975, c 176, pt of §1; am L 1989, c 356, §9; am L 2001, c 169, §8]

**§205A-33 Injunctions.** Any person or agency violating any provision of this chapter may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of this chapter in a suit brought by the authority or the lead agency. [L 1979, c 200, §15; am L 1983, c 76, §1]

### **PART III. SHORELINE SETBACKS**

**§205A-41 Definitions.** As used in this part, unless the context otherwise requires:

"Board approval" means approval by the board of land and natural resources pursuant to chapter 183C.

"Shoreline area" shall include all of the land area between the shoreline and the shoreline setback line and may include the area between mean sea level and the shoreline; provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this part extends seaward of the shoreline, then the term "shoreline area" shall include the entire structure.

"Shoreline setback line" means that line established in this part or by the county running inland from the shoreline at a horizontal plane.

"Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment. [L 1986, c 258, pt of §1; am L 1989, c 356, §§2, 10; am L 1993, c 258, §5; am L 1995, c 11, §12 and c 69, §12]



**§205A-42 Determination of the shoreline.** (a) The board of land and natural resources shall adopt rules pursuant to chapter 91 prescribing procedures for determining a shoreline and appeals of shoreline determinations that are consistent with subsection (b); provided that 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 and for which engineering drawings exist to locate the interface between the shoreline and the structure.

(b) The chairperson of the board of land and natural resources shall cause a public notice to be published in the periodic bulletin published by the office of environmental quality control. All comments to the application for shoreline certification shall be submitted in writing to the state land surveyor no later than fifteen calendar days from the date of the public notice of the application. Notice of application for certification shall be identified by tax map key number, and where applicable, street address and nearest town. [L 1986, c 258, pt of §1; gen ch 1993; am L 1995, c 102, §1]

**§205A-43 Establishment of shoreline setbacks and duties and powers of the department.** (a) Setbacks along shorelines are established of not less than twenty feet and not more than forty feet inland from the shoreline. The department shall adopt rules pursuant to chapter 91, and shall enforce the shoreline setbacks and rules pertaining thereto.

(b) The powers and duties of the department shall include, but not be limited to:

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

(2) The department shall review the plans of all applicants who propose any structure, activity, or facility that would be prohibited without a variance pursuant to this part. The department may require that the plans be supplemented by accurately mapped data and photographs showing natural conditions and topography relating to all existing and proposed structures and activities. [L 1986, c 258, pt of §1; am L 1989, c 356, §11]

**[\$205A-43.5] Powers and duties of the authority.** (a) Prior to action on a variance application, the authority shall hold a public hearing under chapter 91. By adoption of rules under chapter 91, the authority may delegate responsibility to the department. Public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, shall be provided, but a public hearing may be waived prior to action on a variance application for:

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

(2) Protection of a legal structure costing more than \$20,000; provided the structure is at risk of immediate damage from shoreline erosion;

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

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

(b) The authority shall either act on variance applications or, by adoption of rules under chapter 91, delegate the responsibility to the department. [L 1989, c 356, pt of §1]

**§205A-43.6 Enforcement of shoreline setbacks.** (a) The department or an agency designated by department rules shall enforce this part and rules adopted pursuant to this part. Any structure or activity prohibited by section 205A-44, that has not received a variance pursuant to this part or complied with conditions on a variance, shall be removed or corrected. No other state or county permit or approval shall be construed as a variance pursuant to this part.

(b) Where the shoreline is affected by an artificial structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then for purposes of enforcement of this part, the structure shall be construed to be entirely within the shoreline area.

(c) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under chapter 183C shall not be diminished by an artificial structure in violation of this part. [L 1989, c 356, pt of §1; gen ch 1993; am L 1995, c 11, §13 and c 69, §13]

**§205A-44 Prohibitions.** (a) The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited with the following exceptions:

(1) The taking from the shoreline area of the materials, not in excess of one gallon per person per day, for reasonable, personal, noncommercial use, provided that stricter provisions may be established by the counties;

(2) Where the mining or taking is authorized by a variance pursuant to this part;

(3) The clearing of the materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or

(4) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing for purposes under section 46-12; provided that the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity.

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

(1) They were completed prior to June 22, 1970;

(2) They received either a building permit, board approval, or shoreline setback variance prior to June 16, 1989;

(3) They are outside the shoreline area when they receive either a building permit or board approval;

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

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

(6) Work being done consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline area without a variance. [L 1986, c 258, pt of §1; am L 1988, c 375, §1; am L 1989, c 356, §12]

HRS 0205A-0044 ANNOTATIONS

#### **Revision Note**

"June 16, 1989" substituted for "the effective date of this Act" and "the effective date of this section".

#### **Cross References**

Mining or taking of sand, etc., see §171-58.5.

**§205A-45 Shoreline setback lines established by county.** (a) The several counties through rules adopted pursuant to chapter 91 or ordinance may require that shoreline setback lines be established at distances greater than that established in this part.

(b) The several counties through rules adopted pursuant to chapter 91 or ordinance may expand the shoreline area to include the area between mean sea level and the shoreline. [L 1986, c 258, pt of §1; am L 1989, c 356, §13]

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

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that the authority finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;
- (5) Boating, maritime, or watersports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under chapter 269;
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that the authority also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area, and the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or
- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the authority also finds that moving of sand will not adversely affect beach processes, will not diminish the size of a public beach, and will be necessary to stabilize an eroding shoreline.

(b) Hardship shall be defined in rules adopted by the authority under chapter 91. Hardship shall not be determined as a result of county zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989, or as a

result of any other permit or approval listed in rules adopted by the authority.

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

- (1) To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
- (2) To minimize risk of adverse impacts on beach processes;
- (3) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
- (4) To minimize adverse impacts on public views to, from, and along the shoreline. [L 1986, c 258, pt of §1; am L 1989, c 356, §14; am L 1993, c 258, §6]

HRS 0205A-0046 ANNOTATIONS

#### **Revision Note**

"June 16, 1989" substituted for "the effective date of this Act".

**§205A-47 REPEALED.** L 1989, c 356, §16.

**§205A-48 Conflict of other laws.** In case of a conflict between the requirements of any other state law or county ordinance regarding shoreline setback lines, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing contained in this part shall be construed to diminish the jurisdiction of the state department of transportation over wharves, airports, docks, piers, or other commercial harbors, and any other maritime facilities constructed by the State; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the county zoning laws, and found not to conflict with any county ordinances, zoning laws, and building codes. [L 1986, c 258, pt of §1; am L 1991, c 272, §6]

**§205A-49 Adoption of rules.** Each agency charged with carrying out this part shall adopt rules necessary to implement or comply with this part by July 1, 1990. All rules shall be adopted under chapter 91. [L 1986, c 258, pt of §1; am L 1989, c 356, §15]

**[PART IV.] MARINE AND COASTAL AFFAIRS**

**[\$205A-61] Definitions.** As used in this part:

"Exclusive economic zone" or "EEZ" means that area set forth in the Presidential Proclamation 5030 issued on March 10, 1983, whereby the United States proclaimed jurisdiction from the seaward boundary of the State out to two hundred nautical miles from the baseline from which the breadth of the territorial sea is measured.

"Marine" means ocean and ocean-related resources.

"Plan" means the Hawaii ocean resources management plan, created and approved by the Hawaii ocean and marine resources council, as amended by the lead agency. [L 1995, c 104, pt of §2]

**[\$205A-62] Duties and responsibilities of the lead agency.** The lead agency shall have the following duties and responsibilities:

(1) Coordinate overall implementation of the plan, giving special consideration to the plan's priority recommendations;

(2) Review and periodically update the plan;

(3) Coordinate the development of state agency work plans to implement the ocean resources management plan. The work plans shall be revised on a biennial basis and coordinated with the budget process. State agencies with responsibilities relating to marine and coastal zone management include but are not limited to:

(A) The department of agriculture;

(B) The department of business, economic development, and tourism;

(C) The department of defense;

(D) The department of education;

(E) The department of health;

(F) The department of land and natural resources;

(G) The department of public safety;

(H) The department of transportation; and

(I) The University of Hawaii;

(4) Ensure that state agency work plans are closely coordinated with the work plans of relevant federal and county agencies;

(5) Analyze, resolve conflicts between, and prioritize, in cooperation with relevant agencies and as part of the work plan development process, the sector-specific recommendations included in the plan;

(6) Coordinate exclusive economic zone and other marine-related issues with state and county agencies;

(7) Provide technical assistance to the agencies on policy and issue-related matters regarding marine and coastal resources management;

(8) Coordinate marine and coastal education activities; and

(9) Adopt rules pursuant to chapter 91 to carry out the purposes of this part. [L 1995, c 104, pt of §2]

**[\$205A-63] Agency duties to coordinate related programs.** All agencies managing marine and coastal resources, shall:

(1) Actively work toward the goals, objectives, and policies established by this chapter; and

(2) Coordinate the development of the state or county agency's programs with the plan. [L 1995, c 104, pt of §2]

**§205A-64 Public participation.** The lead agency and the public advisory body shall involve citizens and interested groups and organizations in the updating and implementation of the plan. [L 1995, c 104, pt of §2; am L 2002, c 16, §7]

HRS 0205A-0064 ANNOTATIONS

### **Cross References**

Public advisory body, see §205A-3.5.