

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

August 25, 2025

Public Testimony and/or Agency comments received by the Planning Department as of August 25, 2025 9:00 am for the August 26, 2025 Planning Commission meeting regarding the following item:

- G.4.a. ZA-2026-1: A bill (2969)** for an ordinance amending Chapter 8, Article 27 of the Kaua'i County Code 1987, as amended, relating to Shoreline Setback and Coastal Protection. The purpose of this Ordinance is to amend the Shoreline Setback Ordinance by adding safeguards that protect life and property and ensure the longevity and integrity of Kauai's coastal and beach resources along the shoreline = **KAUAI COUNTY COUNCIL**.



University of Hawai'i Sea Grant College Program

2525 Correa Road, HIG 239 • Honolulu, Hawai'i 96822 • Phone: (808) 956-7031 • www.hawaii.seagrant.org

School of Ocean and Earth Science and Technology

MEMORANDUM

Date: August 25, 2025

To: Alisha Summers, Planner, County of Kaua'i Planning Department

Cc: Ka'āina Hull, County of Kaua'i Planning Director
County of Kaua'i Planning Commissioners

From: Ruby Pap, Kaua'i Coastal Land Use Extension Specialist *RP*

Subject: Proposed Bill 2969 Shoreline Setback Ordinance Amendments

Mahalo for the opportunity to work with you on Bill 2969 regarding the shoreline setback ordinance amendments. Please find attached my detailed comments (turn on comments pane). In addition, I recommend the following additions to the definitions (underline):

"Beach processes" means the dynamic interactions between waves, currents, water levels, winds, and sediment mobility along coastlines, influencing the formation and evolution of beaches through erosion, transportation, and deposition of sediment.

"Coastal dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand on the landward side of a beach that is contiguous and approximately parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters formed as wind and occasionally high waves deposit sand in a sheltered area that is typically stabilized with dune-adapted plant species, leading to accumulation and formation of a dune.

COUNTY COUNCIL

Mel Rapozo, Chair
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OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Lyndon M. Yoshioka, Deputy County Clerk

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Council Services Division
4396 Rice Street, Suite 209
Lihue, Kauai, Hawaii 96766

July 17, 2025

Francis DeGracia, Chair
and Members of the Planning Commission
c/o County of Kauai Planning Department
Via Email Only: planningdepartment@kauai.gov

Dear Chair DeGracia and Members of the Planning Commission:

**RE: REFERRAL OF PROPOSED DRAFT BILL (NO. 2969) RELATING
TO SHORELINE SETBACK AND COASTAL PROTECTION**

The Kauai County Council, at its meeting on July 16, 2025, referred the following measure to the Planning Commission for review and recommendation:

“Proposed Draft Bill (No. 2969) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 27, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO SHORELINE SETBACK AND COASTAL PROTECTION”

Thank you for your continued assistance in these planning matters. Should you have any questions, please feel free to contact me at (808) 241-4188.

Sincerely,

JADE K. FOUNTAIN-TANIGAWA
County Clerk, County of Kauai

RM:sf
Enclosure

ORDINANCE NO. _____

BILL NO. (2969)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 27,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO
SHORELINE SETBACK AND COASTAL PROTECTION**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. The Council finds that Kaua'i's coastline is subject to an increasing variety of natural hazards such as tsunamis, high surf, sea level rise, climate change, hurricanes, coastal flooding, and coastal erosion, all of which pose severe dangers to people and properties located near the shoreline. Therefore, proper siting of structures and regulation of improvements to structures along Kaua'i's shoreline areas are critical to protecting life and property, mitigating coastal hazards, and preserving coastal resources, which are culturally important to the people of Hawai'i. To accomplish this, the Council finds it necessary to strengthen Kaua'i's Shoreline Setback Ordinance adopted in 2008 by updating Chapter 8, Article 27, Kaua'i County Code 1987, as amended, to include added definitions for clarity and revised requirements for shoreline property owners seeking to repair existing structures.

The purpose of this Ordinance is to amend the Shoreline Setback Ordinance articulated in Chapter 8, Article 27, Kaua'i County Code 1987, as amended, by adding safeguards that protect life and property and ensure the longevity and integrity of Kaua'i's coastal and beach resources along the shoreline.

SECTION 2. Section 8-27.2, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.2 Definitions.

For purposes of this Article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future adverse effect on beach processes as a result of a structure and/or landscaping located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

"Annual coastal erosion rate" means the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012). Annual coastal erosion rates are available for all lots on Kaua'i fronted by a sandy beach from the Kaua'i Planning Department. These rates were calculated by the University of Hawai'i's Coastal Geology Group for the Kaua'i Coastal Erosion Study, and it

was last updated in 2018. The Planning Director may designate a qualified professional to review and, subject to the Planning Director's approval, update annual coastal erosion rates.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

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

"Beach processes" means the dynamic interactions between waves, currents, and sediment along coastal shorelines, influencing the formation and evolution of beaches.

"Board" shall mean the Board of Land and Natural Resources, State of Hawai'i.

"Building footprint" shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in ground swimming pools.

"Certified shoreline" means the shoreline established by Board pursuant to HRS 205A-42, as amended.

"Coastal dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

"Coastal erosion" means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

"Coastal erosion hazard zone" shall include all of the land between the shoreline and the shoreline setback line.

Summary of Comments on Ruby_Pap_HISeaGrantComments_Bill2969_consolidated.pdf

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Number: 1 Author: Ruby Pap Subject: Sticky Note Date: 8/1/2025 3:26:47 PM

This is same as 205a except uses term coastal dune rather than sand dune. Probably doesn't matter.



Number: 2 Author: Ruby Pap Subject: Sticky Note Date: 8/1/2025 3:28:42 PM

Not sure the source for this definition

“Coastal hazard” means [natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage] elevated risk to public health or safety, property, and the environment in coastal areas resulting from physical phenomena, including but not limited to high waves, storm surge, tsunami, sea level rise, coastal erosion, and other hazards.

“Coastal hazard disclosure statement” means a statement prescribed by the department disclosing the potential for coastal hazards and the potential for further restrictions and limitations on development of the respective property in the future. This statement is an addendum to the shoreline setback determination application, and it must be signed by the property owner prior to acceptance of the determination application.

“Commission” means the Planning Commission of the County of Kauaʻi.

“Department” means the Planning Department of the County of Kauaʻi.

“Director” means the Planning Director of the Planning Department of the County of Kauaʻi.

“Dwelling unit” means any building or any portion thereof which is designed or intended for occupancy by one family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one kitchen.

“FEMA” means the Federal Emergency Management Agency.

“FIRM” means the Flood Insurance Rate Map.

“Hazard assessment” means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawaiʻi Coastal Mitigation Guidebook, (January 2005), which was prepared for the State of Hawaiʻi, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawaiʻi Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration.

“Kauaʻi coastal erosion study” means the quantitative study of Kauaʻi and Niihau’s historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF). The study was conducted by the University of Hawaiʻi’s Coastal Geology Group for the County of Kauaʻi, and it was last updated in 2018. The shoreline change data and shoreline change posters produced by this study are on file with the Kauaʻi Planning Department. The study followed procedures described in the National

 Number: 1 Author: Ruby Pap Subject: Sticky Note Date: 8/1/2025 3:29:49 PM

Interesting definition, mentioning the "risk to public health, safety and property from..." HRS 205a says: "Coastal hazards means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution."

Assessment of Shoreline Change: Historic Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2010) available from the Kaua'i Planning Department.

"Landscaping" means the modification of landscape for an aesthetic or functional purpose that includes the planting of vegetation; the installation of irrigation, rock or water features; grading or grubbing.

"Makai" means seaward or in a seaward direction.

"Mauka" means landward or in a landward direction.

"Minimum buildable footprint" means a building footprint of 1,500 square feet.

"Minor structure" means[:

- (1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kaua'i Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within 180 days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or

(2)] a structure that:

(A) costs less than \$125,000; and

(B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and

(C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and

(D) is consistent with the purposes of this Article and HRS Chapter 205A, as amended; and

(E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbeques, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, lifesaving devices, movable lifeguard stands, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along

existing corridors, temporary tents for special events not exceeding 14 consecutive days in duration during any three-month period, walls and fences that are located more than 40 feet from the shoreline, landscape planting and irrigation systems provided that they are located more than 40 feet away from the shoreline and do not artificially extend the shoreline or shoreline setback area seaward, public park facilities (excluding restrooms, wastewater systems, and shoreline armoring structures or improvements), portable or removable walkways for public access, or, as determined by the director, a structure primarily benefitting the public that will not impact or be impacted by coastal erosion processes; and

- (F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor’s declaration of emergency pursuant to Hawai‘i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42 USC 5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

“Nonconforming structure or activity” means a structure or activity which is lawfully existing within the shoreline setback area because it:

- (1) Was completely built, in its present form, prior to June 22, 1970; or
- (2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or
- (3) Was outside the shoreline setback area when it received either a building permit or board approval[; or].

“Plan” or “site plan” means a detailed construction plan drawn to scale of 1" = 20' 0" that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of [Hawaii] Hawai‘i and shall consist of data including but not limited to:

- (1) Property boundaries;
- (2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;
- (3) Topography in and around the proposed construction;

- (4) Any and all shoreline hardening;
- (5) Flood zones, where applicable;
- (6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;
- (7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;
- (8) A geo-referenced survey of the site; and
- (9) Any other information which identifies the existing condition of the subject parcel of land. ["Primary Coastal Dune" means the first dune encountered mauka of the beach.]

"Primary Coastal Dune" means the first dune encountered¹ mauka of the beach.

"Prohibited activities" means those activities prohibited in the shoreline setback area as provided in Section 8-27.6 of this Article. All other activities shall be regulated by the Special Management Area Rules and Regulations of the County of Kaua'i and the requirements of HRS Chapter 343-5 regarding environmental assessments for any proposed uses within a shoreline area as defined in Section 205A-41.

"Public park facilities" means recreational facilities owned and operated by state or county park agencies for the benefit and use of the general public.

"Qualified consultant" means a coastal scientist with a master of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai'i that has experience in coastal processes. If a dune restoration project is proposed, the qualified consultant shall have experience and expertise with dune restoration.

"Qualified demolition" means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;

 Number: 1 Author: rpap Subject: Sticky Note Date: 7/24/2025 5:13:34 PM
This might be problematic, because dunes are already included in the definition of beach

 Author: Ruby Pap Subject: Sticky Note Date: 8/1/2025 3:54:32 PM
Do you want to say the first dune encountered mauka of the active beach?

 Author: Ruby Pap Subject: Sticky Note Date: 8/1/2025 3:54:53 PM
Do you want to add a definition for 'berm' to distinguish from dune?

 Author: Ruby Pap Subject: Sticky Note Date: 8/1/2025 3:56:19 PM
The SG Coastal Real Estate guide defines berm as: a physical feature marked by an abrupt change in the slope of the beach. Can be used to describe a terrace formed by wave action, a mound, or accumulation of sand.

- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
- (6) Will comply with applicable County Codes.

“Rebuilding” means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer, or architect at 50% or more of the current replacement cost of the structure.

“Repair” means the [reconstruction or renewal] rehabilitation or renovation of any part of a lawfully existing structure, but not the entire structure, solely for the purpose of its maintenance and does not result in an addition to, or enlargement or expansion of, the lawfully existing structure, such as alterations of floors, roofs, walls, or the supporting structure of a building or the rearrangement of any of its component parts. A “substantial improvement” as defined herein shall not be considered a repair. [Repair shall be consistent with the definition of “repair” under Sec. 8-1.5, Kauaʻi County Code 1987, as amended.]

“Revetment” shall mean a facing of stone, concrete, blocks, or other [similar] materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

“Rocky shoreline” means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

“Sea Level Rise Exposure Area (SLR-XA)” means the sea level rise exposure area delineated in the Hawaiʻi Climate Change Mitigation and Adaptation Commission’s Hawaiʻi Sea Level Rise Viewer, or its successors.

“Seawall” means a shoreline hardening structure built of stone, concrete, blocks or other materials to protect a scarp, embankment, or structure against erosion or damage by wave action or currents and has a vertical face on its makai side.

“Shoreline” is as defined in Section 205A-1, Hawaiʻi Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawaiʻi Revised Statutes, as amended.

“Shoreline certification” means a signed statement by the chairperson of the Board of Land and Natural Resources that the shoreline is as located and shown on the map as of a certain date.

“Shoreline change reference feature (SCRF)” means a morphologic feature commonly referred to as the “toe” of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

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 Number: 1 Author: Ruby Pap Subject: Sticky Note Date: 8/4/2025 3:54:21 PM

To be consistent with 13-222, and to distinguish it from the definition of seawall, "revetment" should be defined as: a sloping facing of stone, concrete, blocks or other similar material build to protect the embankment or shore against erosion by wave action or current.

The word missing here is "sloping". See my comment on seawall definition, which is "vertical".

 Number: 2 Author: Ruby Pap Subject: Sticky Note Date: 8/1/2025 3:23:11 PM

PacIOOS should maybe be referenced here as this is where the viewer is hosted.

 Number: 3 Author: Ruby Pap Subject: Sticky Note Date: 8/4/2025 3:54:41 PM

This should probably be consistent with the OCCL administrative rules on shorelines: CH 13-222:

Seawall means a structure with a vertical face separating land and water areas, primarily designed to prevent erosion and other damage due to wave action.

"Shoreline hardening" means the process of fortifying the shoreline or shoreline setback area with hard structures including, but not limited to, seawall and revetments.

"Shoreline setback area" means "shoreline area" as defined in Section 205A-41, Hawai'i Revised Statutes, as amended.

"Shoreline setback line" means that inland line established by Section 8-27.3 that runs parallel to the shoreline.

"Storm buffer zone" is the first 40 feet of the shoreline setback area as measured from the shoreline.

"Structure" is as defined in Section 205A-41, Hawai'i Revised Statutes, as amended.

"Substantial construction" means that 100% of the foundation has been laid[, or that 100% of the foundation of the active phase of a project has been laid where the project is being done in phases].

"Substantial improvement" means any cumulative series of repairs, reconstruction, improvements, or additions to a structure over a 10 year period, where the cumulative cost equals or exceeds 50% of the market value of the structure before the start of construction of the first improvement during that 10 year period. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The value of any substantial improvement shall be determined by the County Engineer or his/ her authorized representative. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Temporary structures" means structures that will exist for no longer than six months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

"Use" means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained."

SECTION 3. Section 8-27.3, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-27.3. Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

Shoreline setback determinations shall be issued based on the following procedures:

(a) A shoreline setback determination shall be required for all structures and subdivisions proposed on lands covered by this Article, except in the following two cases:

- (1) As permitted in Section 8-27.7;
- (2) Where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

(b) Unless otherwise provided in subsection (a) above, no shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a certified shoreline issued within 12 months prior to submission of the application.

(c) Lots Included in the Kaua'i Coastal Erosion Study. For all structures on lots subject to the Kaua'i Coastal Erosion Study, the setback shall be calculated as follows:

- (1) For lots with an average lot depth of less than 140 feet, the setback line shall be 40 feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.
- (2) For lots with an average lot depth of 140 feet to 220 feet, the greater setback of the following shall apply:
 - (A) Forty feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or
 - (B) A shoreline setback determined by taking the average lot depth, subtracting 100 feet, dividing by two and adding [40] 60 feet.

(3) For all lots with an average lot depth of over 220 feet, the greater setback of the following shall apply:

(A) Forty feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback line of [100] 120 feet from the certified shoreline.

Table 1

(This table is included for illustrative purposes only.) Lots Included in the Kaua'i Coastal Erosion Study. The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet.

Average Lot Depth	Setback Line
Less than 140 feet	40 feet plus (70 X annual coastal erosion rate) plus 20 feet
140 feet to 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- (Average Lot Depth minus 100 feet) ÷ by 2 plus [40] <u>60</u> feet
Greater than 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- [100] <u>120</u> feet from the certified shoreline

(d) Lots Not Included in the Kaua'i Coastal Erosion Study. For all structures on lots that were not included in the Kaua'i Coastal Erosion Study, the setback shall be calculated by the following formula, (Average Lot Depth - 100)/2 + [40] 60, subject to the following:

(1) For all lots, the shoreline setback line shall be no less than 60 feet.

(2) The maximum setback that can be required shall be [100] 120 feet.

(e) Non-abutting Lots. If an applicant is unable to secure permission from the abutting owner to complete a certified shoreline for a non-abutting lot within approximately 500 feet of the shoreline, the Planning Director may, pursuant to Sec. 8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.

(f) No subdivision which involves a lot, or any portion of a lot that would be subject to this Article, shall be approved without a coastal erosion study, a

certified shoreline, and a shoreline setback line established in accordance with this Article, unless the subdivision is initiated by the County.

(g) Any subdivision with lots abutting the shoreline approved pursuant to Chapter 9 of the Kaua'i County Code, 1987, as amended, after the adoption of this Ordinance shall have a shoreline setback line of 40 feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(h) Each lot abutting the shoreline in a subdivision approved after the effective date of this ordinance shall be designed to achieve a building footprint of 5,000 square feet of buildable area *mauka* of the shoreline setback line established in accordance with subsections (f) and (g), above.

(i) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawai'i.

(j) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming."

SECTION 4. Section 8-27.6, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:

- (1) The inadvertent taking from the shoreline setback area of the materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;
- (2) Where the mining or taking is authorized by a variance pursuant to Section 205A-46 of the Hawai'i Revised Statutes;
- (3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS Section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity;
- (4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS Section 46-12; provided that, the sand removed

shall be placed on adjacent areas unless the placement would result in significant turbidity;

- (5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;
 - (6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to Article XII, Section 7, of the Hawai'i State Constitution; or
 - (7) For the response to a public emergency or a state or local disaster.
- (b) Any primary coastal dune, which lies wholly or partially in the shoreline setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence prior to December 2, 2009.
- (c) The following are prohibited in the shoreline setback area:
- (1) Individual wastewater system or subsurface improvement unless the applicant demonstrates to the satisfaction of the Director that no feasible alternative exists, including a redesign of the improvement or structure to accommodate the system outside of the setback line, and the system or improvement complies with all statutory and Department of Health requirements.
 - (2) Landscaping that artificially fixes the shoreline.
 - (3) Shoreline hardening unless it is approved by the State of Hawai'i's Office of Conservation and Coastal Lands] Private shoreline hardening structures, including seawalls and revetments, at sites subject to the Kaua'i Coastal Erosion Study and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.
 - (4) Expansion of the footprint of a non-conforming structure, unless otherwise provided by law."

SECTION 5. Section 8-27.7, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.7 Permitted structures within the shoreline setback area.

- (a) The following structures are permitted in the shoreline setback area. All

 Number: 1 Author: Ruby Pap Subject: Highlight Date: 8/4/2025 4:15:04 PM
Amy?

 Number: 2 Author: Ruby Pap Subject: Sticky Note Date: 8/4/2025 4:34:16 PM

the Kaua'i Coastal Erosion Study is intended to apply to all sandy beaches, so if it indeed does apply to all sandy beaches, then they would be covered by this provision. However, would it be easier to say "at sites having sand beaches", consistent with HRS 205a? I suppose there may be some beaches that are lost over time and you wouldn't want them to suddenly be out? Perhaps this could be edited to say..."subject to the Kaua'i Coastal Erosion Study, including sandy beaches..."

 Author: Ruby Pap Subject: Sticky Note Date: 8/4/2025 4:22:13 PM
Would "temporary" sand bag revetments be allowed here?

 Number: 3 Author: rpap Subject: Sticky Note Date: 7/24/2025 5:25:43 PM
jurisdiction question? consistency with state law?

structures and/or landscaping not specifically permitted in this section are prohibited without a variance.

- (1) Existing conforming or legally nonconforming structures.
- (2) Structure that received a shoreline variance or administrative approval prior to February 26, 2008.
- (3) A structure that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
- (4) "Temporary structures" as defined in Section 8-27.2. To ensure that there will be no irreversible or long term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.
- (5) A structure that consists of maintenance, repair, reconstruction, and minor additions or alterations that results in no interference with natural beach processes and is ancillary or associated with one of the following sites:
 - (A) A Hawaiian fish pond;
 - (B) A publicly owned and legal boating, maritime, or water sports recreational facility.
- (6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:
 - (A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of nonconformity; or intensify the use of the structure or its impact on coastal processes;
 - (B) The repairs do not constitute a substantial improvement of the structure;
 - (C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law; and
 - (D) The Planning Director determines that the proposal complies with the definition of "repair" under Sec. 8-27.2, Kaua'i County Code 1987, as amended.
 - (E) To ensure that proposed repairs under Sec. 8-27.2, Kaua'i County

Code 1987, as amended, do not constitute a substantial improvement, the Director shall require the applicant to provide the following:



- (1) Appraisal of the structure.
 - (2) A cost breakdown estimate of the proposed repair project through a "Non-Substantial Improvement Job Cost Breakdown Worksheet." The worksheet is to be submitted to and maintained by the Director and shall include all costs of the subject repair project, including but not limited to costs associated with site work, masonry, plumbing, electrical work, carpentry (framing and finish work), drywall, glass and glazing, painting, flooring, appliances, cabinetry, and all labor.
 - (3) The applicant shall submit a signed declaration acknowledging understanding and agreeing the repair exemption cost figures estimated in the "Non-Substantial Improvement Job Cost Breakdown Worksheet" are subject to review after the completion of the proposed repairs for consistency with the actual and proposed repairs.
 - (4) The applicant shall inform the Planning Department of the date of completion of the repair project and any additional construction materials, labor and associated costs incurred during the repair. In the absence of any notification of completion, the Department shall consider this repair project still ongoing.
 - (5) Within 60 days of the notification of completion or while the repair project is still ongoing, the Director may require the applicant to submit receipts for each of the improvements listed on the "Non-Substantial Improvement Job Cost Breakdown Worksheet" and any other construction materials, labor and associated costs necessitated by the repairs that have been completed. If the applicant cannot provide receipts, the Director may establish the fair market cost for each of the improvements for which receipts cannot be provided.
 - (6) Should the expenditures on the receipts provided demonstrate that the project is not a repair and is in fact considered a substantial improvement pursuant to Section 8-27.2, Kaua'i County Code 1987, as amended, the Director shall follow the enforcement standards in Section 8-27.11, Kaua'i County Code 1987, as amended.
- (F) A certified state shoreline survey is required for any repairs exceeding \$125,000 and must be included in the application for a shoreline setback determination.

 Number: 1 Author: Ruby Pap Subject: Sticky Note Date: 8/4/2025 4:39:04 PM
This looks good to me! Should it go in Sec 8-27.8?

- (7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.
- (8) A structure approved by the Director as a minor structure.
- (9) Qualified demolition of existing structures.
- (10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.
- (11) Scientific studies and surveys, including archaeological surveys.
- (12) Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by law to declare an emergency.
- (13) Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within 30 days following the completion of the film production.
- (14) Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawai'i Revised Statutes.
- (15) Repair and/or rebuilding of existing public park facilities, excluding shoreline armoring structures or improvements.

(b) The following conditions shall apply to any new structure or any substantial improvement permitted in the shoreline setback area:

- (1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.
- (2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.
- (3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion control or shoreline

hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than 40 feet from the shoreline.

- (4) Unless otherwise provided, all new structures and/or landscaping shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, (v) adversely impact neighboring property, or (vi) alter the grade of the shoreline setback area.
- (5) All new structures shall be consistent with the purposes of this Article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along the shoreline.
- (6) The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than 30 days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than 45 days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.
- (7) On lots threatened by sea level rise erosion or historic coastal erosion, before approval of an additional structure, the applicant must agree to retreat, relocate, or remove the proposed and existing structure(s) before or when the shoreline reaches the structure(s) at the respective property owner's expense."

SECTION 6. Section 8-27.8, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.8 Procedures for Obtaining Shoreline Setback Determinations.

- (a) Unless as otherwise provided in this Article, any structure proposed within 500 feet of the shoreline shall first obtain a shoreline setback determination from the Director in accordance with this Article.
- (b) A proposed structure in the shoreline setback area or within 500 feet of the shoreline shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

 Number: 1 Author: Ruby Pap Subject: Sticky Note Date: 8/4/2025 4:41:16 PM

As shown in the SLR-XA data or do you want to leave it open?

(c) Procedure.

- (1) A request for determination for a proposed structure within the shoreline setback area or within 500 feet of the shoreline shall be submitted to the Department on a form prescribed by the Director.
- (2) For public structures whose valuation does not exceed \$500,000 and repairs to lawfully existing private structures as delineated in Section 8-27.7(a), the request shall include construction and site plans, and written text addressing compliance with the criteria set forth in this Article. The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline survey or shoreline survey stamped by a licensed surveyor, registered in the State of Hawai'i and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.
- (3) For public structures whose valuation exceeds five hundred thousand dollars (\$500,000.00) and private structures unless delineated in Sec. 8-27.7(a), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Sec. 8-27.3 or a current certified shoreline survey and coastal erosion information, construction and site plans, existing and final contours, photographs, and a written text addressing compliance with the criteria set forth in this Article. The Director may also require a hazard assessment.
- (4) Within 60 days from the day the application is deemed complete by the Director, the Director shall make a decision in accordance with the criteria set forth in this Article that the proposed structure is:
 - (A) Permitted under Section 8-27.7;
 - (B) Permitted under Section 8-27.7 and subject to conditions;
 - (C) Not permitted under Section 8-27.7;
 - (D) Outside of the shoreline setback area; or
 - (E) Not subject to Section 8-27.3.
- (5) A list of applications for a shoreline setback determination or determination of exemption deemed complete by the Director shall be posted within 10 working days to a publicized website maintained by the Department. All applications are subject to a 30-day comment period.
- (6) The Director shall notify the Commission at the Commission's next regularly scheduled meeting of the following:

- (A) any shoreline setback determinations for approval of a structure proposed within the shoreline setback area or within 500 feet of the shoreline;
 - (B) any approvals or denials by the Director of structures and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure, and a discussion of the factors considered in making the decisions; and
 - (C) any decision by the Director to not require a shoreline setback determination pursuant to Section 8-27.3.
- (7) All shoreline setback determinations made by the Director shall include, but are not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures depicted on a plan drawn to scale, the purpose of the proposed structures, the current certified shoreline (if required), the setback calculations and setback line drawn on the plan, and copies of a coastal erosion study, if applicable. If the Director, pursuant to Section 8-27.3, make a determination of exemption, the Director shall state the justification in writing.
- (8) The Director's decisions pursuant to Section 8-27.8(c)(4) shall not be final until posted on the Commission's agenda. Notwithstanding the posting of the decision, if there is an appeal from the Director's decision, the decision shall not be final until the Commission completes its [decisionmaking] decision-making on the appeal.
- (9) Minor structures shall be completed within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.
- (10) For any non-minor structures allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within [three] two years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within [four] three years from said date.
- (A) An extension of no more than one year may be granted by the Director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per shoreline change rates as provided in the Kaua'i Coastal Erosion Study. In all other cases where substantial

construction has not occurred by the deadline, a new certified shoreline and setback determination shall be required.

(B) In case of failure to complete construction by the [four-year] three-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(11) All applications for Shoreline Setback Determinations shall include a Coastal Hazard Disclosure Statement signed by the property owner.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kaua'i, HRS Chapter 205A, as amended, or HRS Chapter 343-5, as amended.

(e) Fees. A nonrefundable processing fee of \$100 shall accompany a request for determination."

SECTION 7. Section 8-27.9, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.9 Variance application.

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) A non-refundable administrative application fee of \$300[.];

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai'i;

- (4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed structure and/or landscaping is to be located;
 - (5) A site plan of the shoreline setback area, drawn to scale, showing:
 - (A) Existing natural and man-made features and conditions within;
 - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
 - (C) The certified shoreline and the shoreline setback line;
 - (D) Contours at a minimum interval of two feet unless waived by the director; and
 - (E) Proposed development and improvements showing new conditions with a typical section (if a structure), and the proposed development's impacts to neighboring properties.
 - (6) A copy of the certified shoreline survey map of the property;
 - (7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;
 - (8) Analysis and report of coastal erosion rates and coastal processes; and
 - (9) Any other information required by the Director.
- (b) Upon a determination by the Director that the application is complete and in compliance with HRS Chapter 205A, part II and this Article, the Director shall submit the application to the Commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the Commission prior to the matter appearing on an agenda of the Commission.
- (c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than 30 calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to all owners of real property within 300 feet of the parcel that is the subject of the application. Not less than 30 days prior to the

public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the Commission may waive a public hearing on the application for:

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

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

[(3)](2) Other structures or activities; provided that, no person or agency has requested a public hearing within 25 calendar days after public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kaua'i, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the Commission; or

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

SECTION 8. Section 8-27.10, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.10 Criteria for approval of a variance.

(a) A shoreline setback variance may be considered for a structure otherwise prohibited by this Article, if the Commission finds in writing, based on the record presented, that the proposed structure meets those standards established under Section 8-3.3 and is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Landscaping; provided that, the Commission finds that the proposed structure will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline and is in compliance with HRS Section 115-5;

(4) Drainage;

- (5) Boating, maritime, or water sports recreational facilities;
- (6) Structures by public agencies or public utilities regulated under HRS Chapter 269;
- (7) Private and public structures that are clearly in the public interest;
- (8) Private and public structures that will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the Commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;
- (9) Private and public structures that may artificially fix the shoreline but not adversely affect beach processes; provided that, the Commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;
- (10) The Commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.
- (11) Construction of a new dwelling unit. In the case where the minimum buildable footprint does not allow for a setback in accordance with this Article, the Commission may consider granting a variance under the following guidelines:
 - (A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;
 - (B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;
 - (C) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint shall be reduced to no less than [1,000] 500 square feet.
 - (D) If the foregoing approaches in subsections (A), (B) and (C) are done to the maximum extent practicable, the calculated shoreline setback may be reduced to the minimum extent required to permit the construction of a house within the

reduced footprint, provided that a qualified consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding. Under no circumstance shall the shoreline setback line be less than 40 feet.

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding is not prohibited by Article 13, Chapter 8, Kaua'i County Code 1987, as amended and does not:

- (i) enlarge the structure beyond its previous building footprint, and
- (ii) intensify the use of the structure or its impacts on coastal processes.

(B) In the case where the minimum buildable footprint does not allow for a setback of 60 feet, the Commission may consider granting a variance under the following guidelines only:

- (i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;
- (ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;
- (iii) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint may be reduced to the lesser of [1,000] 500 square feet or the actual footprint of the house.

(b) A structure may be considered for a variance upon grounds of hardship if:

- (1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the provisions of the provisions of this Article;
- (2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the provisions of this Article; and
- (3) The proposal is the best practicable alternative which best conforms to the purpose of the provisions of this Article.

(c) Before granting a hardship variance, the Commission shall find that the

applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. The Commission shall consider factors such as coastal hazards, shoreline conditions, erosion, surf inundation, flood conditions and the geography of the lot in determining whether the proposal is a reasonable use of the applicant's land. The Commission shall give due consideration to the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012) and any amendments thereto, or Section 4.1 of the Hawai'i Coastal Hazard Mitigation Guidebook (Hwang, 2005), and any subsequent amendments thereto.

- (d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, [or] (3) actions by the applicant, or (4) small lot size.
- (e) No variance shall be granted unless appropriate conditions are imposed:
 - (1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;
 - (2) To minimize and mitigate risk of adverse impacts on beach processes and neighboring properties;
 - (3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property;
 - (4) To minimize adverse impacts on public views to, from, and along the shoreline; and
 - (5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code 1987, as amended, and Drainage, Chapter 22, Article 16, Kaua'i County Code 1987, as amended, respectively.
- (f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed

restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this Article.

- (g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.
- (h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.
- (i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.
- (j) In no case shall the Commission grant a shoreline setback variance for structures constructed without valid permits."

SECTION 9. Section 8-27.11, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this Article in accordance with Article 24 of the County of Kaua'i Comprehensive [zoning] Zoning Ordinance[], HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure or improvement(s) to an existing structure.

- (1) In determining the disposition of [a] an unpermitted structure or improvement(s) to an existing structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.
- (2) Following the relevant procedures described in Sec. 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure or improvement(s) to an

 Number: 1 Author: Ruby Pap Subject: Sticky Note Date: 8/4/2025 5:00:27 PM
do you want to use the word 'repair' here to be consistent with the other changes?

existing structure [unless it is determined that removal shall cause a greater harm to the ecosystem and/or public improvements than allowing the structure to remain].

- (3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The Director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the Director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The Director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted there under, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this Chapter.

- (d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition to any other remedy as may be provided by law.
- (e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction.
- (f) The Director shall enforce this Article in accordance with Article 24 of the County of Kaua'i Comprehensive Zoning Ordinance and HRS Chapter 205A."

SECTION 10. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 11. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling, or printing this

ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 12. This ordinance shall take effect upon its approval. These amendments shall be applied to any pending application, determination, or permits.

Introduced by:



MEL RAPOZO



BERNARD P. CARVALHO, JR.

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i

V:\BILLS\2024-2026 TERM\2025-292.1 Shoreline Setback Coastal Protection bill
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