



SHORELINE SETBACK ORDINANCE

Ordinance No. 863
Adopted January 25, 2008

INTRODUCTION

This presentation should provide a good understanding of how the new ordinance affects properties on Kauai that are determined to be within the shoreline setback. At a glance these tables show the new setbacks that could apply.

Table 1: The distance in feet of the shoreline setback as measured from the certified shoreline based on the average lot depth in feet.

If the average lot depth is:	100 feet or less	101 to 120 feet	121 to 140 feet	141 to 160 feet	161 to 180 feet	181 to 200 feet	More than 200 feet
Then the minimum setback distance is:	40 feet	50 feet	60 feet	70 feet	80 feet	90 feet	100 Feet

Table 2: The distance in feet of the shoreline setback as measured from the certified shoreline based on the building footprint and a coastal erosion study.

For structures with a building footprint that is:	Less than or equal to 5,000 square feet	Greater than 5,000 square feet
Then the setback distance is:	40 feet plus 70 times the annual coastal erosion rate	40 feet plus 100 times the annual costal erosion rate



INTENT OF THE ORDINANCE

There is a strong need to address the many issues relating to shoreline erosion. Retreating shorelines threaten improvements, thus creating a need for erosion protection devices such as seawalls that tend to distort the shoreline by leading to erosion of other nearby properties, as well as increasing beach loss that reduces lateral public access.

This ordinance sets forth procedures for establishing building setbacks from the shoreline based on scientifically documented rates of shoreline change and the history of coastal hazards in specific locations on Kauai.

GENERAL OVERVIEW

This General Overview is designed to serve as a prelude to help the reader understand and follow the contents of the slide show better by highlighting its important points and summarizing its working concepts.

When reading through the ordinance, the reader should keep in mind that its provisions cover two basic categories: **1) a series of processes with prescribed procedures, and 2) sets of regulatory standards.**

The very first step that a property owner should take is to find out whether their property is affected by this ordinance or not. In this step it is important to recognize that this law not only applies to beachfront properties, but also to properties that are located within 500 feet of the shoreline. This step is handled through a “Shoreline Setback Determination” process that verifies whether a property is affected or not; and if so, whether the proposed activity and/or structure is acceptable or not. The distance of the setback line is also established as part of this process

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It is important to note that a significant feature of this ordinance that should not be overlooked are the sections that cover “prohibited” and “permitted” structures and activities within the shoreline setback area. These provisions establish the shoreline setback area as an “overlay zone” that has both prohibited and permitted uses in the same manner as “zoning.”

Finally, this ordinance also allows an affected property owner to apply for an exception to the ordinance through a Variance when the owner is unable to meet the ordinance requirements. When reading through the pertinent sections relating to a Variance application it is important to understand that there are: 1) qualification requirements for applying, 2) circumstances when a Variance can be processed, 3) procedures relating to the processing of a Variance, and 4) criteria requirements for approval of a Variance.

PREFACE

This slide presentation organizes the information into the seven (7) main parts of the ordinance, which are:

1. Interim Regulations
2. Applicability
3. Shoreline Setback Determination -Establishment of the Shoreline Setback Line
4. Uses – Prohibited and Permitted
5. Structure and Activity Determinations for Structures and Activities **Within** the Shoreline Setback Area
6. Variances
7. Enforcement and Appeal

PART 1

Interim Regulations



INTERIM BASIS

The Planning Department is in the process of producing coastal erosion maps that will be used as a basis for the new shoreline setback requirements. It will be an on-going coastal erosion study which will provide the data base.

This ordinance is an interim measure until the data base is formally established and new setback rules and an ordinance are adopted by the Planning Commission, County Council, and Mayor.

Until that time, landowners will be allowed to site improvements by developing their own data through scientifically accepted methodologies specified within the Ordinance.

PART 2

Applicability

APPLICABILITY

This ordinance applies to all lands:

- A. Abutting the shoreline; or,
- B. Located within 500 feet of the shoreline unless the owner can demonstrate to the Planning Director that the project will not be affected by coastal erosion or hazards, excluding natural catastrophes.

Also contained in this section of the ordinance are some other related requirements such as: **1)** the minimum shoreline setback is 40 feet; **2)** coastal erosion data is to be incorporated during the earliest stages of development; and, **3)** prior to commencing grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground by a licensed surveyor.

PART 3

Shoreline Setback Determination - Establishment of the Shoreline Setback Line

ESTABLISHMENT OF THE SHORELINE SETBACK LINE:

- Once it has been determined that a certified shoreline survey is required for a project, the applicant must submit a certified shoreline survey that is no more than six months old.
- For lots with an average depth of 160 feet or less, the shoreline setback line is based on the average depth provided in Table 1, or the applicant can choose to do a coastal erosion study provided in Table 2. (See next slide for tables)
- For lots with an average depth of 160 feet or more, the shoreline setback is based on a coastal erosion study as provided in Table 2 . (See next slide for tables)

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PART 4

Uses -

Prohibited and Permitted

PROHIBITED ACTIVITIES IN THE SHORELINE SETBACK AREA:

Mining or taking of sand, dead coral or coral rubble, rocks, soils, or other marine deposits, **except for:**

1. Less than 1 gallon per day.
2. Mining or taking is authorized by a Variance.
3. Clearing of existing drainage pipes, canals, and mouths of streams for the purposes under HRS 46-11.5; unless the sand removal is placed in adjacent areas that would result in significant turbidity.
4. The cleaning of the shoreline setback area for state or county maintenance purposes under HRS 46-11.5; unless the sand removal is placed in adjacent areas that would result in significant turbidity.

PERMITTED STRUCTURES AND ACTIVITIES WITHIN THE SHORELINE SETBACK AREA:

- A. New structures or activities are allowed provided that they :
 - a. Meet all applicable codes.
 - b. Indemnify the County of Kauai.
 - c. No erosion control devices (seawalls and the like).
 - d. Conditions shall run with the land (recorded at the Bureau of Conveyances).
- B. A structure that is in the Shoreline Setback Area that was constructed legally at the time is 'grandfathered'. These structures are allowed and may possibly be repaired provided that they meet the criteria in the Ordinance.
- C. Temporary structures or activities.
- D. Some facilities which are publicly owned, and which result in no interference with the natural beach.
- E. Beach nourishment or dune restoration projects approved by applicable government agencies.
- F. A structure or activity approved by the Planning Director as a minor structure or activity.

PART 5

Structure and Activity
Determinations for
Structures and Activities
Within the Shoreline
Setback Area



PROCEDURES FOR SHORELINE SETBACK STRUCTURE AND ACTIVITY DETERMINATIONS FOR STRUCTURES AND ACTIVITIES WITHIN THE SHORELINE SETBACK AREA

- A request for determination is submitted to the Planning Department on a form prescribed by the Planning Director.
- Information is to include all documentation as outlined in the Ordinance.
- Within 120 days from the day the application is deemed complete the Planning Director shall: approve, approve with conditions, or deny an application for approval/determination. The Planning Director can also determine that a proposed activity or structure is not subject to the ordinance because it is outside of the shoreline setback area.
- Planning Director's shoreline setback determinations and approvals shall not be final until accepted by the Planning Commission.
- The Ordinance has time frames for performance that should be noted.

PART 6

Variations

Note: If an applicant is unable to comply with the provisions of the shoreline setback ordinance, the applicant is allowed to apply for a Variance. Information pertaining to applying for a Variance is covered on the next series of slides.

VARIANCE APPLICATIONS:

- Applications must include plans, site plans, photographs, and any other plans, drawings, maps, or data determined to be necessary to evaluate the application.
- \$300 administrative fee. A \$7,500 administrative fee if the structure is partially or fully built without required approvals.
- Owner's approval.
- Environmental Assessment according to Chapter 343, HRS.
- Names and addresses, and tax key of owners adjacent to and abutting the boundaries of the lot under application.
- A copy of the certified shoreline survey map.
- Justification of the project addressing the purpose and intent of the rules and criteria of approval of a variance.
- Analysis and report of coastal erosion rates and coastal processes.
- Any other information required by the Planning Director.

PROCESSING OF THE VARIANCE APPLICATION

The Planning Director submits the Variance application to the Planning Commission when an application is determined to be complete.

If determined to be incomplete, the Variance application must be returned with a written description identifying the incomplete portions.

The Planning Director must submit a written report, a copy of the Variance application, and all other documents submitted with the application to the Planning Commission prior to the matter appearing on an agenda.

The Ordinance outlines the criteria for approval of a Variance

PUBLIC HEARINGS FOR VARIANCES

- Variances are public hearing matters and subject to all applicable notices.
- **EXCEPTIONS. A public hearing may be waived for:**
 - Stabilization of shoreline erosion by moving of sand entirely on public lands.
 - Protection of a legal structure costing more than \$20,000 if the structure is at risk of immediate damage from shoreline erosion.
 - 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.
 - Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or water sports recreational facilities that result in little or no interference with natural shoreline processes.

VARIANCE HARDSHIP

VARIANCE CONSIDERATION UPON GROUNDS OF HARDSHIP

- The applicant would be deprived of all reasonable use of the land if required to fully comply with the Shoreline Setback rules.
 - The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the Shoreline Setback rules.
 - The proposal is the best practicable alternative that best conforms to the purpose of the Shoreline Setback rules.
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- **BEFORE GRANTING A HARDSHIP VARIANCE:**
 - The Planning Commission must determine that the applicant's proposal is a reasonable use of the land that factors in shoreline conditions, erosion, surf and flood conditions, and the geography of the lot.
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- **HARDSHIP SHALL NOT INCLUDE:**
 - Economic hardship resulting from:
 - County zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989.
 - Any other permit or approvals that may have been issued by the Planning Commission.
 - Actions by the applicant.



CONDITIONS THAT MUST BE IMPOSED FOR VARIANCES:

- Maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss.
- Minimize and mitigate risk of adverse impacts on the beach processes.
- Minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property.
- Minimize adverse impacts on public views to, from, and along the shoreline.
- Comply with flood and drainage requirements.



INELIGIBILITY AND AGREEMENT OF PROJECTS WITH VARIANCE APPROVALS

- A structure shall not be eligible for protection by shoreline hardening during the life of the structure.
- A unilateral agreement must be recorded stating that the structure does not meet Shoreline Setback requirements and could be subject to coastal erosion and high wave action.
- The County must be indemnified and held harmless in the aforementioned agreement.

PART 7

Enforcement and Appeal

ENFORCEMENT AND APPEAL

ENFORCEMENT:

- Removal of an unpermitted structure:
 - Must follow the Planning Commission rules of practice and procedure.
 - The Planning Director or Planning Commission can order the removal of an unpermitted structure unless it is determined that removal shall cause a greater public harm than allowing the structure to remain.
 - If the Planning Director or Planning Commission determines that removal would be inappropriate, the property owner must obtain a variance and pay penalties.
- The Planning Director may institute civil action in any court.

CIVIL FINES:

- \$1,000 plus at the Planning Director's discretion, between 10% to 100% of the estimated construction cost of the unpermitted structure.

APPEAL OF DIRECTOR'S DECISION:

- Any person can appeal any Shoreline Setback Determination, Approval or Denial by the Planning Director to the Planning Commission. The appeal must be filed within 15 days after the decision. Within 20 days the Planning Commission must determine to appealer's standing to appeal.

DISCLAIMER

The purpose of this slide presentation is to provide the reader with a general understanding of the intent and operational concepts of the Shoreline Setback Ordinance No. 863.

The information in these slides should **not** be utilized to replace the ordinance. Instead it is strongly recommended that a copy of the ordinance be referred to and that questions regarding the specifics of its content be directed to the County Planning Department (Ph. 241-6677).