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# HAWAII SHORELINE EROSION MANAGEMENT STUDY

## VOLUME II APPENDICES

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**FINAL REPORT  
JUNE 1989**

Hawaii Coastal Zone Management Program  
TC224.H3H39 1989 v.2

# HAWAII SHORELINE EROSION MANAGEMENT STUDY

## OVERVIEW AND CASE STUDY SITES

(Makaha, Oahu; Kailua-Lanikai, Oahu; Kukuiula-Poipu, Kauai)

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# VOLUME II

**APPENDIX A**

**FEDERAL REGISTER**

**Part 330, NATIONWIDE PERMITS**

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Thursday  
November 13, 1986

33 CFR Parts 320 through 330  
Regulatory Programs of the Corps of Engineers; Final Rule

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**Part II**

**Department of  
Defense**

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**Corps of Engineers, Department of the  
Army**

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**33 CFR Parts 320 through 330  
Regulatory Programs of the Corps of  
Engineers; Final Rule**



(vii) Description of improvements to navigation not listed in paragraph (c)(5) of this section:

(4) Nature and location of significant obstructions to navigation in portions of the waterbody used or potentially capable of use in interstate commerce:

(5) Authorized projects:

(i) Nature, condition and location of any improvements made under projects authorized by Congress:

(ii) Description of projects authorized but not constructed:

(iii) List of known survey documents or reports describing the waterbody:

(6) Past or present interstate commerce:

(i) General types, extent, and period in time:

(ii) Documentation if necessary:

(7) Potential use for interstate commerce, if applicable:

(i) If in natural condition:

(ii) If improved:

(8) Nature of jurisdiction known to have been exercised by Federal agencies if any:

(9) State or Federal court decisions relating to navigability of the waterbody, if any:

(10) Remarks:

(11) Finding of navigability (with date) and recommendation for determination:

#### § 329.15 Inquiries regarding determinations.

(a) Findings and determinations should be made whenever a question arises regarding the navigability of a waterbody. Where no determination has been made, a report of findings will be prepared and forwarded to the division engineer, as described above. Inquiries may be answered by an interim reply which indicates that a final agency determination must be made by the division engineer. If a need develops for an emergency determination, district engineers may act in reliance on a finding prepared as in Section 329.14 of this Part. The report of findings should then be forwarded to the division engineer on an expedited basis.

(b) Where determinations have been made by the division engineer, inquiries regarding the navigability of specific portions of waterbodies covered by these determinations may be answered as follows:

This Department, in the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, has determined that \_\_\_\_\_ (River) (Bay) (Lake, etc.) is a navigable water of the United States from \_\_\_\_\_ to \_\_\_\_\_. Actions which modify or otherwise affect those waters are subject to the jurisdiction of this

Department, whether such actions occur within or outside the navigable areas.

(c) Specific inquiries regarding the jurisdiction of the Corps of Engineers can be answered only after a determination whether (1) the waters are navigable waters of the United States or (2) if not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters of the United States that the assertion of regulatory jurisdiction is deemed necessary.

#### § 329.16 Use and maintenance of lists of determinations.

(a) Tabulated lists of final determinations of navigability are to be maintained in each district office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the division engineer; changes are not considered final until a determination has been made by the division engineer.

### PART 330—NATIONWIDE PERMITS

Sec.	
330.1	General.
330.2	Definitions.
330.3	Activities occurring before certain dates.
330.4	Public notice.
330.5	Nationwide permits.
330.6	Management practices.
330.7	Notification procedures.
330.8	Discretionary Authority.
330.9	State water quality certification.
330.10	Coastal Zone Management consistency determination.
330.11	Nationwide permit verification.
330.12	Expiration of nationwide permits.

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

#### § 330.1 General.

The purpose of this regulation is to describe the Department of the Army's (DA) nationwide permit program and to list all current nationwide permits which have been issued by publication herein. A nationwide permit is a form of general permit which may authorize activities throughout the nation. (Another type of general permit is a "regional permit" and is issued by division or district engineers on a regional basis in accordance with 33 CFR Part 325). Copies of regional conditions and

modifications, if any, to the nationwide permits can be obtained from the appropriate district engineer.

Nationwide permits are designed to allow certain activities to occur with little, if any, delay or paperwork.

Nationwide permits are valid only if the conditions applicable to the nationwide permits are met. Failure to comply with a condition does not necessarily mean the activity cannot be authorized but rather that the activity can only be authorized by an individual or regional permit. Several of the nationwide permits require notification to the district engineer prior to commencement of the authorized activity. The procedures for this notification are located at § 330.7 of this Part. Nationwide permits can be issued to satisfy the requirements of section 10 of the Rivers and Harbors Act of 1999, section 404 of the Clean Water Act, and/or section 103 of the Marine Protection, Research and Sanctuaries Act. The applicable authority is indicated at the end of each nationwide permit.

#### § 330.2 Definitions.

(a) The definitions of 33 CFR Parts 321-329 are applicable to the terms used in this Part.

(b) The term "headwaters" means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second. The district engineer may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means. For streams that are dry for long periods of the year, district engineers may establish the "headwaters" as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time.

(c) Discretionary authority means the authority delegated to division engineers in § 330.8 of this part to override provisions of nationwide permits, to add regional conditions, or to require individual permit application.

#### § 330.3 Activities occurring before certain dates.

The following activities were permitted by nationwide permits issued on July 19, 1977, and unless modified do not require further permitting:

(a) Discharges of dredged or fill material into waters of the United States outside the limits of navigable waters of the United States that occurred before the phase-in dates which began July 25, 1975, and extended section 404 jurisdiction to all waters of the United

States. (These phase-in dates are: After July 25, 1975, discharges into navigable waters of the United States and adjacent wetlands; after September 1, 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes, greater than 5 acres in surface area; and after July 1, 1977, discharges into all waters of the United States.) (Section 404)

(b) Structures or work completed before December 18, 1968, or in waterbodies over which the district engineer had not asserted jurisdiction at the time the activity occurred provided, in both instances, there is no interference with navigation. (Section 10)

#### § 330.4 Public notice.

(a) *Chief of Engineers.* Upon proposed issuance of new nationwide permits, modification to, or reissuance of, existing nationwide permits, the Chief of Engineers will publish a notice in the Federal Register seeking public comments and including the opportunity for a public hearing. This notice will state the availability of information at the Office of the Chief of Engineers and at all district offices which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance under general permit authority. The Chief of Engineers will prepare this information which will be supplemented, if appropriate, by division engineers.

(b) *District engineers.* Concurrent with publication in the Federal Register of proposed, new, or reissued nationwide permits by the Chief of Engineers, district engineers will so notify the known interested public by an appropriate notice. The notice will include regional conditions, if any, developed by the division engineer.

#### § 330.5 Nationwide permits.

(a) *Authorized activities.* The following activities are hereby permitted provided they meet the conditions listed in paragraph (b) of this section and, where required, comply with the notification procedures, of § 330.7.

(1) The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR Part 66, Subchapter C). (Section 10)

(2) Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR Part 322.5(g)). (Section 10)

(3) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill constructed prior to the requirement for authorization, provided such repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure or fill, and further provided that the structure or fill has not been put to uses differing from uses specified for it in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repair, rehabilitation, or replacement are permitted. Maintenance dredging and beach restoration are not authorized by this nationwide permit. (Section 10 and 404)

(4) Fish and wildlife harvesting devices and activities such as pound nets, crab traps, eel pots, lobster traps, duck blinds, and clam and cyster digging. (Section 10)

(5) Staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar scientific structures. (Section 10)

(6) Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes. Drilling of exploration-type bore holes for oil and gas exploration is not authorized by this nationwide permit; the plugging of such holes is authorized. (Sections 10 and 404)

(7) Outfall structures and associated intake structures where the effluent from that outfall has been permitted under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act) (see 40 CFR Part 122) provided that the district or division engineer makes a determination that the individual and cumulative adverse environmental effects of the structure itself are minimal in accordance with § 330.7 (c)(2) and (d). Intake structures per se are not included—only those directly associated with an outfall structure are covered by this nationwide permit. This permit includes minor excavation, filling and other work associated with installation of the intake and outfall structures. (Sections 10 and 404)

(8) Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of Interior, Mineral Management Service, provided those structures are not placed within the limits of any designated shipping safety fairway or traffic

separation scheme (where such limits have not been designated or where changes are anticipated, district engineers will consider recommending the discretionary authority provided by 330.8 of this Part, and further subject to the provisions of the fairway regulations in 33 CFR 322.5(1) (Section 10).

(9) Structures placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard. (Section 10)

(10) Non-commercial, single-boat, mooring buoys. (Section 10)

(11) Temporary buoys and markers placed for recreational use such as water skiing and boat racing provided that the buoy or marker is removed within 30 days after its use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

(12) Discharge of material for backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in preconstruction bottom contours (excess material must be removed to an upland disposal area). A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. (The utility line and outfall and intake structures will require a Section 10 permit if in navigable waters of the United States. See 33 CFR Part 322. See also paragraph (a)(7) of this section). (Section 404)

(13) Bank stabilization activities provided:

(i) The bank stabilization activity is less than 500 feet in length;

(ii) The activity is necessary for erosion prevention;

(iii) The activity is limited to less than an average of one cubic yard per running foot placed along the bank within waters of the United States;

(iv) No material is placed in excess of the minimum needed for erosion protection;

(v) No material is placed in any wetland area;

(vi) No material is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;

(vii) Only clean material free of waste metal products, organic materials, unsightly debris, etc. is used; and

(viii) The activity is a single and complete project. (Sections 10 and 404)

(14) Minor road crossing fills including all attendant features, both temporary and permanent, that are part of a single and complete project for crossing of a non-tidal waterbody, provided that the crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and provided further that discharges into any wetlands adjacent to the waterbody do not extend beyond 100 feet on either side of the ordinary high water mark of that waterbody. A "minor road crossing fill" is defined as a crossing that involves the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water. The crossing may require a permit from the US Coast Guard if located in navigable waters of the United States. Some road fills may be eligible for an exemption from the need for a Section 404 permit altogether (see 33 CFR 323.4). District engineers are authorized, where local circumstances indicate the need, to define the term "expected high flows" for the purpose of establishing applicability of this nationwide permit. (Sections 10 and 404)

(15) Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharge has been authorized by the US Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this nationwide permit and will require an individual or regional Section 404 permit. (Section 404)

(16) Return water from an upland, contained dredged material disposal area (see 33 CFR 323.2(d)) provided the state has issued a site specific or generic certification under section 401 of the Clean Water Act (see also 33 CFR 325.2(b)(1)). The dredging itself requires a Section 10 permit if located in navigable waters of the United States. The return water or runoff from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d) even though the disposal itself occurs on the upland and thus does not require a section 404 permit. This nationwide permit satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. (Section 404)

(17) Fills associated with small hydropower projects at existing reservoirs where the project which

includes the fill is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; has a total generating capacity of not more than 1500 kw (2,000 horsepower); qualifies for the short-form licensing procedures of the FERC (see 18 CFR 4.61); and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment are minimal in accordance with § 330.7 (c)(2) and (d). (Section 404)

(18) Discharges of dredged or fill material into all waters of the United States other than wetlands that do not exceed ten cubic yards as part of a single and complete project provided the material is not placed for the purpose of stream diversion. (Sections 10 and 404)

(19) Dredging of no more than ten cubic yards from navigable waters of the United States as part of a single and complete project. This permit does not authorize the connection of canals or other artificial waterways to navigable waters of the United States (see Section 33 CFR 322.5(g)). (Section 10)

(20) Structures, work, and discharges for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan, (40 CFR Part 300), provided the Regional Response Team which is activated under the Plan concurs with the proposed containment and cleanup action. (Sections 10 and 404)

(21) Structures, work, discharges associated with surface coal mining activities provided they were authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977; the appropriate district engineer is given the opportunity to review the Title V permit application and all relevant Office of Surface Mining or state (as the case may be) documentation prior to any decision on that application; and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment from such structures, work, or discharges are minimal in accordance with §§ 330.7 (c) (2) and (3) and (d). (Sections 10 and 404)

(22) Minor work, fills, or temporary structures required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This permit does not authorize maintenance dredging, shoal removal, or river bank snagging. (Sections 10 and 404)

(23) Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: DAEN-CWO-N) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this nationwide permit of any agency's categorical exclusions, the Chief of Engineers will solicit comments through publication in the Federal Register. (Sections 10 and 404)

(24) Any activity permitted by a state administering its own Section 404 permit program for the discharge of dredged or fill material authorized at 33 U.S.C. 1344(g)-(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. Those activities which do not involve a section 404 state permit are not included in this nationwide permit but many will be exempted by section 154 of Pub. L. 94-587. (See 33 CFR 322.3(a)(2)). (Section 10)

(25) Discharge of concrete into tightly sealed forms or cells where the concrete is used as a structural member which would not otherwise be subject to Clean Water Act jurisdiction. (Section 404)

(26) Discharges of dredged or fill material into the waters listed in paragraphs (a)(26) (i) and (ii) of this section except those which cause the loss or substantial adverse modification of 10 acres or more of such waters of the United States, including wetlands. For discharges which cause the loss or substantial adverse modification of 1 to 10 acres of such waters, including wetlands, notification to the district engineer is required in accordance with section 330.7 of this section. (Section 404).

(i) Non-tidal rivers, streams, and their lakes and impoundments, including adjacent wetlands, that are located above the headwaters.

(ii) Other non-tidal waters of the United States, including adjacent wetlands, that are not part of a surface tributary system to interstate waters or

navigable waters of the United States (i.e., isolated waters).

(b) *Conditions.* The following special conditions must be followed in order for the nationwide permits identified in paragraph (a) of this section to be valid:

(1) That any discharge of dredged or fill material will not occur in the proximity of a public water supply intake.

(2) That any discharge of dredged or fill material will not occur in areas of concentrated shellfish production unless the discharge is directly related to a shellfish harvesting activity authorized by paragraph (a)(4) of this section.

(3) That the activity will not jeopardize a threatened or endangered species as identified under the Endangered Species Act (ESA), or destroy or adversely modify the critical habitat of such species. In the case of federal agencies, it is the agencies' responsibility to comply with the requirements of the ESA. If the activity may adversely affect any listed species or critical habitat, the district engineer must initiate Section 7 consultation in accordance with the ESA. In such cases, the district engineer may:

(i) Initiate section 7 consultation and then, upon completion, authorize the activity under the nationwide permit by adding, if appropriate, activity specific conditions, or

(ii) Prior to or concurrent with section 7 consultation he may recommend discretionary authority (See section 330.8) or use modification, suspension, or revocation procedures (See 33 CFR 325.7).

(4) That the activity shall not significantly disrupt the movement of those species of aquatic life indigenous to the waterbody (unless the primary purpose of the fill is to impound water);

(5) That any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants (see section 307 of the Clean Water Act) in toxic amounts;

(6) That any structure or fill authorized shall be properly maintained.

(7) That the activity will not occur in a component of the National Wild and Scenic River System; nor in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status;

(8) That the activity shall not cause an unacceptable interference with navigation;

(9) That, if the activity may adversely affect historic properties which the National Park Service has listed on, or determined eligible for listing on, the National Register of Historic Places, the permittee will notify the district

engineer. If the district engineer determines that such historic properties may be adversely affected, he will provide the Advisory Council on Historic Preservation an opportunity to comment on the effects on such historic properties or he will consider modification, suspension, or revocation in accordance with 33 CFR 325.7. Furthermore, that, if the permittee before or during prosecution of the work authorized, encounters a historic property that has not been listed or determined eligible for listing on the National Register, but which may be eligible for listing in the National Register, he shall immediately notify the district engineer;

(10) That the construction or operation of the activity will not impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights;

(11) That in certain states, an individual state water quality certification must be obtained or waived (See § 330.9);

(12) That in certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (See § 330.10);

(13) That the activity will comply with regional conditions which may have been added by the division engineer (See § 330.8(a)); and

(14) That the management practices listed in § 330.6 of this part shall be followed to the maximum extent practicable.

(c) *Further information.* (1) District engineers are authorized to determine if an activity complies with the terms and conditions of a nationwide permit unless that decision must be made by the division engineer in accordance with § 330.7.

(2) Nationwide permits do not obviate the need to obtain other Federal, state or local authorizations required by law.

(3) Nationwide permits do not grant any property rights or exclusive privileges.

(4) Nationwide permits do not authorize any injury to the property or rights of others.

(5) Nationwide permits do not authorize interference with any existing or proposed Federal project.

(d) *Modification, Suspension or Revocation of Nationwide Permits.* The Chief of Engineers may modify, suspend, or revoke nationwide permits in accordance with the relevant procedures of 33 CFR 325.7. Such authority includes, but is not limited to: adding individual, regional, or nationwide conditions; revoking authorization for a category of activities

or a category of waters by requiring individual or regional permits; or revoking an authorization on a case-by-case basis. This authority is not limited to concerns for the aquatic environment as is the discretionary authority in § 330.8.

#### § 330.6 Management practices.

(a) In addition to the conditions specified in § 330.5 of this Part, the following management practices shall be followed, to the maximum extent practicable, in order to minimize the adverse effects of these discharges on the aquatic environment. Failure to comply with these practices may be cause for the district engineer to recommend, or the division engineer to take, discretionary authority to regulate the activity on an individual or regional basis pursuant to § 330.8 of this Part.

(1) Discharges of dredged or fill material into waters of the United States shall be avoided or minimized through the use of other practical alternatives.

(2) Discharges in spawning areas during spawning seasons shall be avoided.

(3) Discharges shall not restrict or impede the movement of aquatic species indigenous to the waters or the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

(4) If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized.

(5) Discharge in wetlands areas shall be avoided.

(6) Heavy equipment working in wetlands shall be placed on mats.

(7) Discharges into breeding areas for migratory waterfowl shall be avoided.

(8) All temporary fills shall be removed in their entirety.

#### § 330.7 Notification procedures.

(a) The general permittee shall not begin discharges requiring pre-discharge notification pursuant to the nationwide permit at § 330.5(a)(26):

(1) Until notified by the district engineer that the work may proceed under the nationwide permit with any special conditions imposed by the district or division engineer; or

(2) If notified by the district or division engineer that an individual permit may be required; or

(3) Unless 20 days have passed from receipt of the notification by the district engineer and no notice has been

received from the district or division engineer.

(b) Notification pursuant to the nationwide permit at § 330.5(a)(26) must be in writing and include the information listed below. Notification is not an admission that the proposed work would result in more than minimal impacts to waters of the United States; it simply allows the district or division engineer to evaluate specific activities for compliance with general permit criteria.

(1) Name, address, and phone number of the general permittee;

(2) Location of the planned work;

(3) Brief description of the proposed work, its purpose, and the approximate size of the waters, including wetlands, which would be lost or substantially adversely modified as a result of the work; and

(4) Any specific information required by the nationwide permit and any other information that the permittee believes is appropriate.

(c) *District engineer review of notification.* Upon receipt of notification, the district engineer will promptly review the general permittee's notification to determine which of the following procedures should be followed:

(1) If the nationwide permit at § 330.5(a)(26) is involved and the district engineer determines either, (i) the proposed activity falls within a class of discharges or will occur in a category of waters which has been previously identified by the Regional Administrator, Environmental Protection Agency; the Regional Director, Fish and Wildlife Service; the Regional Director, National Marine Fisheries Service; or the heads of the appropriate state natural resource agencies as being of particular interest to those agencies; or (ii) the particular discharge has not been previously identified but he believes it may be of importance to those agencies, he will promptly forward the notification to the division engineer and the head and appropriate staff officials of those agencies to afford those agencies an adequate opportunity before such discharge occurs to consider such notification and express their views, if any, to the district engineer concerning whether individual permits should be required.

(2) If the nationwide permits at § 330.5(a) (7), (17), or (21) are involved and the Environmental Protection Agency, the Fish and Wildlife Service, the National Marine Fisheries Service or the appropriate state natural resource or water quality agencies forward concerns to the district engineer, he will forward those concerns to the division engineer

together with a statement of the factors pertinent to a determination of the environmental effects of the proposed discharges, including those set forth in the 404(b)(1) guidelines, and his views on the specific points raised by those agencies.

(3) If the nationwide permit at § 330.5(a)(21) is involved the district engineer will give notice to the Environmental Protection Agency and the appropriate state water quality agency. This notice will include as a minimum the information required by paragraph (b) of this section.

(d) *Division engineer review of notification.* The division engineer will review all notifications referred to him in accordance with paragraph (c)(1) or (c)(2) of this section. The division engineer will require an individual permit when he determines that an activity does not comply with the terms or conditions of a nationwide permit or does not meet the definition of a general permit (see 33 CFR 322.2(f) and 323.2(n)) including discharges under the nationwide permit at § 330.5(a)(26) which have more than minimal adverse environmental effects on the aquatic environment when viewed either cumulatively or separately. In reaching his decision, he will review factors pertinent to a determination of the environmental effects of the proposed discharge, including those set forth in the 404(b)(1) guidelines, and will give full consideration to the views, if any, of the federal and state natural resource agencies identified in paragraph (c) of this section. If the division engineer decides that an individual permit is not required, and a federal or appropriate state natural resource agency has indicated in writing that an activity may result in more than minimal adverse environmental impacts, he will prepare a written statement, available to the public on request, which sets forth his response to the specific points raised by the commenting agency. When the division engineer reaches his decision he will notify the district engineer, who will immediately notify the general permittee of the division engineer's decision.

#### § 330.8 Discretionary authority.

Except as provided in paragraphs (c) (2) and (d) of this section, division engineers on their own initiative or upon recommendation of a district engineer are authorized to modify nationwide permits by adding regional conditions or to override nationwide permits by requiring individual permit applications on a case-by-case basis, for a category of activities, or in specific geographic areas. Discretionary authority will be

based on concerns for the aquatic environment as expressed in the guidelines published by EPA pursuant to section 404(b)(1). (40 CFR Part 230)

(a) *Activity Specific conditions.* Division engineers are authorized to modify nationwide permits by adding individual conditions on a case-by-case basis applicable to certain activities within their division. Activity specific conditions may be added by the District Engineer in instances where there is mutual agreement between the district engineer and the permittee. Furthermore, district engineers will condition NWP's with conditions which have been imposed on a state section 401 water quality certification issued pursuant to § 330.9 of this Part.

(b) *Regional conditions.* Division engineers are authorized to modify nationwide permits by adding conditions on a generic basis applicable to certain activities or specific geographic areas within their divisions. In developing regional conditions, division and district engineers will follow standard permit processing procedures as prescribed in 33 CFR Part 325 applying the evaluation criteria of 33 CFR Part 320 and appropriate parts of 33 CFR Parts 321, 322, 323, and 324. Division and district engineers will take appropriate measures to inform the public of the additional conditions.

(c) *Individual permits—(1) Case-by-Case.* In nationwide permit cases where additional individual or regional conditioning may not be sufficient to address concerns for the aquatic environment or where there is not sufficient time to develop such conditions under paragraphs (a) or (b) of this section, the division engineer may suspend use of the nationwide permit and require an individual permit application on a case-by-case basis. The district engineer will evaluate the application and will either issue or deny a permit. However, if at any time the reason for taking discretionary authority is satisfied, then the division engineer may remove the suspension, reactivating authority under the nationwide permit. Where time is of the essence, the district engineer may telephonically recommend that the division engineer assert discretionary authority to require an individual permit application for a specific activity. If the division engineer concurs, he may orally authorize the district engineer to implement that authority. Oral authorization should be followed by written confirmation.

(2) *Category.* Additionally, after notice and opportunity for public hearing, division engineers may decide that individual permit applications

should be required for categories of activities, or in specific geographic areas. However, only the Chief of Engineers may modify, suspend, or revoke nationwide permits on a statewide or nationwide basis. The division engineer will announce the decision to persons affected by the action. The district engineer will then regulate the activity or activities by processing an application(s) for an individual permit(s) pursuant to 33 CFR Part 325.

(d) For the nationwide permit found at § 330.5(a)(26), after the applicable provisions of § 330.7(a) (1) and (3) have been satisfied, the permittee's right to proceed under the general permit may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 325.7.

(e) A copy of all modifications or revocations of activities covered by nationwide permits will be forwarded to the Office of the Chief of Engineers, ATTN: DAEN-CWO-N.

#### § 330.9 State water quality certification.

(a) State water quality certification is required for nationwide permits which may result in any discharge into waters of the United States. If a state issues a water quality certification which includes special conditions, the district engineer will add these conditions as conditions of the nationwide permit in that state. However, if such conditions do not comply with the provisions of 33 CFR 325.4 or if a state denies a required 401 certification for a particular nationwide permit, authorization for all discharges covered by the nationwide permit within the state is denied without prejudice until the state issues an individual or generic water quality certification or waives its right to do so. A district engineer will not process an individual permit application for an activity for which authorization has been denied without prejudice under the nationwide permit program. However, if the division engineer determines that it would otherwise be appropriate to exercise his discretionary authority, pursuant to § 330.8, to override the nationwide permit or permits in question, he may do so, and the district engineer may proceed with the processing of individual permit applications. In instances where a state has denied the 401 water quality certification for discharges under a particular nationwide permit, applicants must furnish the district engineer with an individual or generic 401 certification or a copy of the application to the state for the certification. If a state fails to act within a reasonable period of time (see § 325.2(b)(1)(ii)), a waiver will be

presumed. Upon receipt of an individual or generic certification or a waiver of certification, the proposed work is authorized under the nationwide permit. If a state issues a conditioned individual certification, the district engineer will include those conditions that comply with 33 CFR 325.4 as special conditions of the nationwide permit (see 33 CFR Part 330.8(a)) and notify the applicant that the work is authorized under the nationwide permit provided all conditions are met.

(b) Certification requirements for nationwide permits fall into the following general categories:

(1) *No certification required.* Nationwide permits numbered 1, 2, 4, 5, 8, 9, 10, 11, and 19 do not involve activities which may result in a discharge and therefore 401 certification is not applicable.

(2) *Certification sometimes required.* Nationwide permits numbered 3, 6, 7, 13, 20, 21, 22, and 23 each involve various activities, some of which may result in a discharge and require certification, and others of which do not. State denial of certification for any specific nationwide permit in this category affects only those activities involving discharges. Those not involving discharges remain in effect.

(3) *Certification required.* Nationwide permits numbered 12, 14, 15, 16, 17, 18, 24, 25, and 26 involve activities which would result in discharges and therefore 401 certification is required.

(c) District engineers will take appropriate measures to inform the public of which waterbodies or regions within the state, and for which nationwide permits, an individual 401 water quality certification is required.

#### § 330.10 Coastal zone management consistency determination.

In instances where a state has not concurred that a particular nationwide permit is consistent with an approved coastal zone management plan, authorization for all activities subject to such nationwide permit within or affecting the state coastal zone agency's area of authority is denied without prejudice until the applicant has furnished to the district engineer a coastal zone management consistency determination pursuant to section 307 of the Coastal Zone Management Act and the state has concurred in it. If a state does not act on an applicant's consistency statement within six months after receipt by the state, consistency shall be presumed. District engineers will take appropriate measures to inform the public of which waterbodies or regions within the state, and for which nationwide permits, such individual

consistency determination is required. District engineers will not process any permit application for an activity which has been denied without prejudice under the nationwide permit program. However, if the division engineer determines that it would otherwise be appropriate to exercise his discretionary authority, pursuant to § 330.8, to override the nationwide permit or permits in question, he may do so, and the district engineer may proceed with the processing of individual permit applications.

#### § 330.11 Nationwide permit verification.

(a) General permittees may, and in some cases must, request from a district engineer confirmation that an activity complies with the terms and conditions of a nationwide permit. District engineers will respond promptly to such requests. The response will state that the verification is valid for a period of no more than two years or a lesser period of time if deemed appropriate. Section 330.12 takes precedence over this section, therefore, it is incumbent upon the permittee to remain informed of changes to nationwide permits.

(b) If the district engineer decides that an activity does not comply with the terms or conditions of a nationwide permit, he will so notify the person desiring to do the work and indicate that an individual permit is required (unless covered by a regional permit).

(c) If the district engineer decides that an activity does comply with the terms and conditions of a nationwide permit he will so notify the general permittee. In such cases, as with any activity which qualifies under a nationwide permit, the general permittee's right to proceed with the activities under the nationwide permit may be modified, suspended, or revoked only in accordance with the procedures of 33 CFR 325.7.

#### § 330.12 Expiration of nationwide permits.

The Chief of Engineers will review nationwide permits on a continual basis, and will decide to either modify, reissue (extend) or revoke the permits at least every five years. If a nationwide permit is not modified or reissued within five years of publication in the Federal Register, it automatically expires and becomes null and void. Authorization of activities which have commenced or are under contract to commence in reliance upon a nationwide permit will remain in effect provided the activity is completed within twelve months of the date a nationwide permit has expired or was revoked unless discretionary permit authority has been exercised in

accordance with § 330.8 of this Part or modification, suspension, or revocation procedures are initiated in accordance with the relevant provisions of 33 CFR 325.7. Activities completed under the authorization of a nationwide permit which was in effect at the time the activity was completed continue to be authorized by that nationwide permit.

[FR Doc. 86-25301 Filed 11-12-86; 8:45 am]

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**APPENDIX B**

**CHAPTER 205A, HAWAII REVISED STATUTES**

**COASTAL ZONE MANAGEMENT**

**AND H.B. 1902**



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with associated structures used by public utilities as the term is defined in section 269-1, wharves, docks, piers and other harbor and waterfront improvements and any other maritime facility and water sport recreational facilities may be permitted within the shoreline area; provided that the plans therefor are submitted for review and are approved by the agency after a public hearing has been held and that the appropriate state body has found that the proposed structures will result only in a minimum interference with natural shoreline processes; provided further that any such structure constructed by a governmental body shall be exempt from the provisions of this part except as to the requirement that two public hearings shall be held by the governmental body charged with such construction, once when the project is first conceived and again when the project is substantially designed and planned, but prior to the letting of the contract. Repair, strengthening, reinforcement, and maintenance of fishponds, and improvements for aquaculture farms shall be exempt from this chapter, upon issuance of a permit or waiver of the requirements for same by the board of land and natural resources. [L 1970, c 136, pt of §2; am L 1973, c 107, §1(5); am L 1975, c 27, §3; am L 1976, c 57, §3]

**§205-37 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 herein contained shall be construed to diminish the jurisdiction of the state department of transportation over wharves, airports, docks, piers, small boat, or other harbors, and any other maritime or water sports recreational facilities to be constructed on state land 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 code. [L 1970, c 136, pt of §2; am L 1973, c 107, §1(6)]

## CHAPTER 205A COASTAL ZONE MANAGEMENT

### PART I. COASTAL ZONE MANAGEMENT

#### SECTION

- 205A-1 DEFINITIONS
- 205A-2 COASTAL ZONE MANAGEMENT PROGRAM; OBJECTIVES AND POLICIES
- 205A-3 LEAD AGENCY
- 205A-4 IMPLEMENTATION OF OBJECTIVES, POLICIES, AND GUIDELINES
- 205A-5 COMPLIANCE
- 205A-6 CAUSE OF ACTION

### PART II. SPECIAL MANAGEMENT AREAS

- 205A-21 FINDINGS AND PURPOSES
- 205A-22 DEFINITIONS
- 205A-23 COUNTY SPECIAL MANAGEMENT AREA BOUNDARIES
- 205A-24, 25 REPEALED
- 205A-26 SPECIAL MANAGEMENT AREA GUIDELINES
- 205A-27 DESIGNATION OF SPECIAL MANAGEMENT AREA AUTHORITY
- 205A-28 PERMIT REQUIRED FOR DEVELOPMENT
- 205A-29 SPECIAL MANAGEMENT AREA USE PERMIT PROCEDURE
- 205A-30 EMERGENCY AND MINOR PERMITS
- 205A-31 REPEALED
- 205A-32 PENALTIES
- 205A-33 INJUNCTIONS

## COASTAL ZONE MANAGEMENT

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### Case Notes

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

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

### Note

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

**§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 the special management area after compliance pursuant to section 205A-23, and the waters from the shoreline to the seaward limit of the State’s jurisdiction and any other area which the lead agency may designate for the purpose of administering the coastal zone management program;

“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 department of planning and economic development;

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

“Shoreline” means the upper reaches of the wash of the waves, other than storm and tidal waves, 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]

### Revision Note

Numeric designations deleted.

**§205A-2 Coastal zone management program; objectives and policies.**

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

(b) Objectives.

(1) Recreational resources;

(A) Provide coastal recreational opportunities accessible to the public.

(2) Historic resources;

(A) Protect, preserve, and, where desirable, restore those natural

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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 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, and subsidence.
- (7) Managing development;
  - (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- (c) Policies.
  - (1) Recreational resources;
    - (A) Improve coordination and funding of coastal recreation planning and management; and
    - (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
      - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
      - (ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;
      - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
      - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
      - (v) Encouraging expanded public recreational use of county, State, and federally owned or controlled shoreline lands and waters having recreational value;
      - (vi) Adopting water quality standards and regulating point and 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, artificial reefs for surfing and fishing; and
      - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions;

COASTAL ZONE MANAGEMENT

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and crediting such dedication against the requirements of section 46-6.

- (2) Historic resources;
  - (A) Identify and analyze significant archaeological resources;
  - (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
  - (C) Support state goals for protection, restoration, interpretation, and display of historic resources.
- (3) Scenic and open space resources;
  - (A) Identify valued scenic resources in the coastal zone management area;
  - (B) Insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
  - (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
  - (D) Encourage those developments which are not coastal dependent to locate in inland areas.
- (4) Coastal ecosystems;
  - (A) Improve the technical basis for natural resource management;
  - (B) Preserve valuable coastal ecosystems of significant biological or economic importance;
  - (C) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
  - (D) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.
- (5) Economic uses;
  - (A) Concentrate in appropriate areas the location of coastal dependent development necessary to the State's economy;
  - (B) Insure that coastal dependent development such as harbors and ports, visitor industry facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
  - (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
    - (i) Utilization of presently designated locations is not feasible;
    - (ii) Adverse environmental effects are minimized; and
    - (iii) Important to the State's economy.
- (6) Coastal hazards;
  - (A) Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence hazard;
  - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard;

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- (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
  - (D) Prevent coastal flooding from inland projects.
- (7) Managing development;
- (A) Effectively utilize and implement existing law to the maximum extent possible in managing present and future coastal zone development;
  - (B) Facilitate timely processing of application for development permits and resolve overlapping or conflicting permit requirements; and
  - (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the general public to facilitate public participation in the planning and review process. [L 1977, c 188, pt of §3]

§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, permits, licenses and development proposals for consistency with the coastal zone management program;
- (4) In consultation with the counties and the general public prepare guidelines as necessary to further specify and clarify the objectives and policies of the 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;
- (6) Facilitate public participation in the coastal zone management program;
- (7) Review state programs within the coastal zone management area from the shoreline to the seaward limit of the State's jurisdiction for consistency with the coastal zone management program; and
- (8) Prepare an annual report to the governor and the legislature which shall include recommendations for enactment of any legislation necessary to require any agency to comply with the objectives and policies of this chapter and any guidelines enacted by the legislature. [L 1977, c 188, pt of §3; am L 1979, c 200, §2]

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

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

§205A-5 Compliance. All agencies shall amend their regulations, as

may be necessary, to comply with the objectives and policies of this chapter and any guidelines enacted by the legislature. [L 1977, c 188, pt of §3; am L 1979, c 200, §4]

**§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]

## 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]

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

- (1) "Applicant" means any individual, organization, partnership, or corporation, including any utility, and any agency of government.
- (2) "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.
- (3) "Development" means any of the uses, activities, or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in subparagraph (B):
  - (A) "Development:" includes the following:

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- (i) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
  - (ii) Grading, removing, dredging, mining, or extraction of any materials;
  - (iii) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
  - (iv) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
  - (v) Construction, reconstruction, demolition, or alteration of the size of any structure.
- (B) "Development" does not include the following:
- (i) Construction of a single-family residence that is not part of a larger development;
  - (ii) Repair or maintenance of roads and highways within existing rights-of-way;
  - (iii) Routine maintenance dredging of existing streams, channels, and drainage ways;
  - (iv) The 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;
  - (v) Zoning variances, except for height, density, parking, and shoreline setback;
  - (vi) Repair, maintenance, or interior alterations to existing structures;
  - (vii) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
  - (viii) The use of any land for the purpose of cultivating, planting, growing, and harvesting of 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 subject to review by the authority in accordance with subparagraph (C);
  - (ix) The transfer of title to land;
  - (x) The creation or termination of easements, covenants, or other rights in structures or land;
  - (xi) The subdivision of land into lots greater than twenty acres in size;
  - (xii) The subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
  - (xiii) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
  - (xiv) Structural and nonstructural improvements to existing single-family residences including additional dwelling unit, where otherwise permissible; and

- (xv) Nonstructural improvements to existing commercial structures.
- (C) Whenever the authority finds that any use, activity, or operation excluded in subparagraph (B) is or may become part of a larger project, the cumulative impact of which may have a significant environmental or ecological effect on the special management area, that use, activity, or operation shall be defined as "development" for the purpose of this part.
- (4) "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.
- (5) "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.
- (6) "Special management area minor permit" means an action by the authority authorizing development, the valuation of which is not in excess of \$65,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.
- (7) "Special management area use permit" means an action by the authority authorizing development, the valuation of which exceeds \$65,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.
- (8) "Structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.
- (9) "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]

#### Attorney General Opinions

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

#### Case Notes

"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



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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 100 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, 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]

#### Case Notes

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

**§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]

**§205A-29 Special management area use permit procedure.** (a) The authority in each county, upon consultation with the central coordinating agency, shall establish and may amend pursuant to chapter 91, by rule or regulation 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 written public notice once in a newspaper of general circulation in the State 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 or regulation 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.

## 205A-29 PLANNING AND ECONOMIC DEVELOPMENT

(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]

### 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.

§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. [L 1975, c 176, pt of §1; am L 1979, c 200, §13]

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

[§205A-32] Penalties. (a) Any person who violates any provision of this part shall be subject to a civil fine not to exceed \$10,000.

(b) In addition to any other penalties, any person who performs any development in violation of this part shall be subject to a civil fine not to exceed \$500 a day for each day in which such violation persists. [L 1975, c 176, pt of §1]

§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]

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## CHAPTER 206 OAHU LAND DEVELOPMENT

### SECTION

- 206-1 DEFINITIONS
- 206-2 ADMINISTRATION OF CHAPTER
- 206-3 INTERESTED MEMBERS, OFFICERS OR EMPLOYEES
- 206-4 GENERAL POWERS
- 206-5 DECLARATION OF DEVELOPMENT AREAS
- 206-6 ACQUISITION OF LAND WITHIN A DEVELOPMENT AREA
- 206-7 PROPERTY WHICH SHALL NOT BE ACQUIRED FOR DEVELOPMENT PROJECTS
- 206-8 DEVELOPMENT OF LANDS ACQUIRED
- 206-9 DISPOSITION OF LANDS
- 206-10 RESTRICTIONS ON SALE AND USE OF RESIDENTIAL LOTS BY PURCHASER
- 206-11 BREACH, MORTGAGING, EFFECT OF BREACH, ETC.
- 206-12 REQUIREMENT TO DEVELOP
- 206-13 POWER TO LEASE, PLEDGE, OR MORTGAGE
- 206-14 COOPERATIVE AGREEMENTS WITH OTHER GOVERNMENT AGENCIES
- 206-15 HEARINGS, WITNESSES, ETC.
- 206-16 INVESTMENT OF RESERVES
- 206-17 ADDITIONAL POWERS
- 206-18 SECURITY FOR FUNDS DEPOSITED BY BOARD
- 206-19 EMINENT DOMAIN

## PLANNING AND ECONOMIC DEVELOPMENT

### CHAPTER 205A COASTAL ZONE MANAGEMENT

#### PART I. COASTAL ZONE MANAGEMENT

##### SECTION

##### 205A-1 DEFINITIONS

#### PART III. SHORELINE SETBACKS

##### 205A-41 DEFINITIONS

##### 205A-42 DETERMINATION OF THE SHORELINE

##### 205A-43 ESTABLISHMENT OF SHORELINE SETBACKS AND DUTIES AND POWERS OF THE DEPARTMENT

##### 205A-44 PROHIBITIONS

##### 205A-45 SHORELINE SETBACK LINES ESTABLISHED BY COUNTY

##### 205A-46 FUNCTIONS OF DEPARTMENT

##### 205A-47 EXEMPTIONS

##### 205A-48 CONFLICT OF OTHER LAWS

##### 205A-49 ADOPTION OF RULES

#### Cross References

Housing finance development corporation compliance with environmental and shoreline protection laws, see note at end of chapter 201E.

#### PART I. COASTAL ZONE MANAGEMENT

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

\*\*\*

"Lead agency" means the office of state planning;

\*\*\*

"Shoreline" means the upper reaches of the wash of the waves, other than storm and tidal 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. [am L 1986, c 258, §2; am L 1987, c 336, §7; am L 1988, c 352, §4]

#### Revision Note

Only the definitions amended are compiled in this Supplement.

#### §205A-6 Cause of action.

#### Case Notes

Judicial intervention under this section should not precede resolution of issues by administrative agency. 69 H. (No. 11228), 734 P.2d 161.

#### PART II. SPECIAL MANAGEMENT AREAS

#### §205A-26 Special management area guidelines.

#### Case Notes

Grant of permit overturned because findings required by paragraph (2) not made. 68 H. (Nos. 10078, 10079).

Not violated where requisite findings were contained in committee report recommending approval of development. 6 H. App. (No. 11313), 735 P.2d 930.

**PART III. SHORELINE SETBACKS**

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

"Authority" means the authority as defined in part II.

"Department" means the planning department of each county.

"Shoreline area" means all of the land area between the shoreline and the shoreline setback line.

"Shoreline setback line" means that line established in this part or by the county running inland from and parallel to the shoreline at a horizontal plane. [L 1986, c 258, pt of §1]

**§205A-42 Determination of the shoreline.** 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; provided that no determination of a shoreline shall be valid for a period longer than twelve months, except where the shoreline is fixed by man-made structures which have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure. [L 1986, c 258, pt of §1]

**§205A-43 Establishment of shoreline setbacks and duties and powers of the department.** 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 within a period of one year after June 22, 1970, pursuant to chapter 91, and shall enforce the shoreline setbacks and rules pertaining thereto. [L 1986, c 258, pt of §1]

**§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 such 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 of sand by the State or county is for the replenishment of sand in the shoreline area, provided that for the purpose of this paragraph an environmental assessment for the proposed project shall be prepared pursuant to chapter 343, a finding shall be made by the proposing state or county agency that the proposed project is in the public interest and will not have any adverse significant social, economic, or environmental impact, and both a public informational meeting and public hearing shall be held by the proposing state or county agency in the affected community. The public hearing shall be preceded by public notice of the proposed project not less than thirty days before the hearing and published on three separate days in a newspaper of general circulation in the State or county affected by the proposed project. The proposing state or county agency shall also notify in writing the owners or lessees of adjoining, overlapping, or affected property of the proposed project;
- (3) The clearing of sand from existing drainage pipes and canals and from the mouths of streams; or
- (4) The cleaning of shoreline area for State or county maintenance purposes, including the purposes under section 46-11.5 and section 46-12; provided

**205A-44 PLANNING AND ECONOMIC DEVELOPMENT**

that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity.

(b) Except as otherwise provided in this part no structure or any portion thereof, including but not limited to seawalls, groins, and revetments, shall be permitted within the shoreline area; provided that any lawful nonconforming structure existing on June 22, 1970, shall be permitted; provided further that any structure which is necessary for safety reasons or to protect the property from erosion or wave damages shall be permitted. A structure not conforming to this section but for which a building permit application has been filed on or before June 22, 1970, shall also be permitted as a nonconforming structure, subject to the ordinances and regulations of the particular county.

(c) Any nonconforming structure, including but not limited to residential dwellings, agricultural structures, seawalls, groins, and revetments may be replaced or reconstructed within the shoreline area; provided that no nonconforming structure shall be substantially enlarged or changed to another nonconforming use within the shoreline area. If the use of any nonconforming structure is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited. [L 1986, c 258, pt of §1; am L 1988, c 375, §1]

**Cross References**

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

**§205A-45 Shoreline setback lines established by county.** The several counties through ordinances may require that shoreline setback lines be established at a distance greater than that established in this part. [L 1986, c 258, pt of §1]

**§205A-46 Functions of department.** (a) The department shall administer the provisions of this part. It shall review the plans of all applicants who propose any structure, activity, or facility which otherwise would be prohibited by this part.

The department may require that the plans be supplemented by accurately mapped data showing natural conditions and topography relating to all existing and proposed structures, buildings, and facilities.

The department may also require reasonable changes in the submitted plans in order to obtain optimum compliance practicable with this part.

(b) After reviewing the plans, the department shall transmit the plans with its recommendations to the authority. The authority shall grant a variance for such structure, activity, or facility if, after a hearing pursuant to chapter 91, it finds in writing, based on the record presented either: (1) that such structure, activity, or facility is in the public interest; or (2) that hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed on that portion of the land within the shoreline area. Any variance granted to the maximum extent practicable shall be subject to such conditions as will cause the structure, activity, or facility to result in a minimum interference with natural shoreline processes and as will provide for safe public shoreline access. The authority shall render written approval or disapproval within forty-five days after the hearing on the applicant's plans, unless such period is extended by written agreement between the authority and the applicant. [L 1986, c 258, pt of §1]

**Note**

For variances and permits granted before May 29, 1986, see L 1986, c 258, §5.

COMMUNITY DEVELOPMENT AUTHORITY 206E-3

§205A-47 Exemptions. Tunnels, canals, basins, and ditches, together with associated structures used by public utilities as the term is defined in section 269-1, wharves, docks, piers, and other harbor and waterfront improvements and any other maritime facility and water sport recreational facilities may be permitted within the shoreline area; provided that the plans are submitted for review and are approved by the authority after a public hearing has been held and that the appropriate state body has found that the proposed structures will result only in a minimum interference with natural shoreline processes; provided further that any such structure constructed by a governmental body shall be exempt from the provisions of this part except as to the requirement that two public hearings shall be held by the governmental body charged with such construction, once when the project is first conceived and again when the project is substantially designed and planned, but prior to the letting of the contract. Repair, strengthening, reinforcement, and maintenance of fishponds, and improvements for aquaculture farms shall be exempt from this part, upon issuance of a permit or waiver of the requirements by the board of land and natural resources. [L 1986, c 258, pt of §1]

§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, small boat, or other harbors, and any other maritime or water sports recreational facilities to be constructed on state land 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 code. [L 1986, c 258, pt of §1]

§205A-49 Adoption of rules. Each agency charged with carrying out this part shall adopt rules under chapter 91, as necessary, to implement or comply with this part by June 30, 1987. [L 1986, c 258, pt of §1]

**CHAPTER 206E  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

PART I. GENERAL PROVISIONS

SECTION

- 206E-3 HAWAII COMMUNITY DEVELOPMENT AUTHORITY; ESTABLISHED
- 206E-5 DESIGNATION OF COMMUNITY DEVELOPMENT DISTRICTS; COMMUNITY DEVELOPMENT PLANS
- 206E-6 DISTRICT-WIDE IMPROVEMENT PROGRAM
- 206E-15 RESIDENTIAL PROJECTS; COOPERATIVE AGREEMENTS

PART II. KAKAAKO COMMUNITY DEVELOPMENT DISTRICT

- 206E-32 DISTRICT; ESTABLISHED, BOUNDARIES

PART IV. REVENUE BONDS FOR PUBLIC FACILITY PROJECTS

- 206E-153 REVENUE BONDS; AUTHORIZATION

**PART I. GENERAL PROVISIONS**

§206E-3 Hawaii community development authority; established. (a) There is established the Hawaii community development authority, which shall be

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# A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 205A, Hawaii Revised Statutes, is amended  
2 by adding two new sections to be appropriately designated and to  
3 read as follows:

4 "§205A- Powers and duties of the authority. (a) Prior to  
5 action on a variance application, the authority shall hold a  
6 public hearing under chapter 91. By adoption of rules under  
7 chapter 91, the authority may delegate responsibility to the  
8 department. Public and private notice, including reasonable  
9 notice to abutting property owners and persons who have requested  
10 this notice, shall be provided, but a public hearing may be  
11 waived prior to action on a variance application for:

- 12 (1) Stabilization of shoreline erosion by the moving of sand  
13 entirely on public lands;  
14 (2) Protection of a legal structure costing more than  
15 \$20,000; provided the structure is at risk of immediate  
16 damage from shoreline erosion;  
17 (3) Other structures or activities; provided that no person  
18 or agency has requested a public hearing within twenty-  
19 five calendar days after public notice of the  
20 application; or



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

6       (b) The authority shall either act on variance applications  
7 or, by adoption of rules under chapter 91, delegate the  
8 responsibility to the department.

9       §205A- Enforcement of shoreline setbacks. (a) The  
10 department or an agency designated by department rules shall  
11 enforce this part and rules adopted pursuant to this part. Any  
12 structure or activity prohibited by section 205A-44, that has not  
13 received a variance pursuant to this part or complied with  
14 conditions on a variance, shall be removed or corrected. No  
15 other State or county permit or approval shall be construed as a  
16 variance pursuant to this part.

17       (b) Where the shoreline is affected by a man-made structure  
18 that has not been authorized with government agency permits  
19 required by law, if any part of the structure is on private  
20 property, then for purposes of enforcement of this part, the  
21 structure shall be construed to be entirely within the shoreline  
22 area.

23       (c) The authority of the board of land and natural  
24 resources to determine the shoreline and enforce rules  
25 established under section 183-41 shall not be diminished by a

1 man-made structure in violation of this part."

2 SECTION 2. Section 205A-41, Hawaii Revised Statutes, is  
3 amended by adding two new definitions to be appropriately  
4 inserted and to read as follows:

5 "Board approval" means approval by the board of land and  
6 natural resources pursuant to section 183-41.

7 "Structure" includes, but is not limited to, any portion of  
8 any building, pavement, road, pipe, flume, utility line, fence,  
9 groin, wall, or revetment."

10 SECTION 3. Section 171-58.5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~§~~171-58.5~~]~~ Prohibitions. The mining or taking of  
13 sand, dead coral or coral rubble, rocks, soil, or other marine  
14 deposits seaward from the shoreline is prohibited with the  
15 following exceptions:

16 (1) The taking from seaward of the shoreline of such  
17 materials, not in excess of one gallon per person per  
18 day for reasonable, personal, noncommercial use;

19 (2) For the replenishment or protection of public shoreline  
20 areas and adjacent public lands seaward of the shoreline  
21 [area], or construction or maintenance of State approved  
22 lagoons, harbors, launching ramps or navigational  
23 channels with a permit authorized under section 183-41[,

1 provided that such permit shall not be issued for  
2 Hakipu'u sandbar, which is offshore of Molii fishpond,  
3 Oahu];

4 (3) The clearing of such materials from existing drainage  
5 pipes and canals and from the mouths of streams[;]  
6 including clearing for the purposes under section  
7 46-11.5; provided that the sand removed shall be placed  
8 on adjacent areas unless this placement would result in  
9 significant turbidity; or

10 (4) The cleaning of areas seaward of the shoreline for  
11 state or county maintenance purposes including the  
12 purposes under [section 46-11.5 and] section 46-12;  
13 provided that the [materials] sand removed shall be  
14 placed on adjacent areas unless such placement would  
15 result in significant turbidity."

16 SECTION 4. Section 205A-1, Hawaii Revised Statutes, is  
17 amended by amending the definitions of "coastal zone management  
18 area" and "shoreline" to read as follows:

19 ""Coastal zone management area" means [the special management  
20 area after compliance pursuant to section 205A-23, and] the  
21 waters from the shoreline to the seaward limit of the State's  
22 jurisdiction and [any other area which the lead agency may  
23 designate for the purpose of administering the coastal zone

1 management program;} all land areas excluding those lands  
2 designated as state forest reserves;

3 "Shoreline" means the upper reaches of the wash of the waves,  
4 other than storm and [tidal] seismic waves, at high tide during  
5 the season of the year in which the highest wash of the waves  
6 occurs, usually evidenced by the edge of vegetation growth, or  
7 the upper limit of debris left by the wash of the waves."

8 SECTION 5. Section 205A-3, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§205A-3 Lead agency. The lead agency shall:

- 11 (1) Receive, disburse, use, expend, and account for all  
12 funds that are made available by the United States and  
13 the State for the coastal zone management program;
- 14 (2) Provide support and assistance in the administration of  
15 the coastal zone management program;
- 16 (3) Review federal programs, permits, licenses, and  
17 development proposals for consistency with the coastal  
18 zone management program;
- 19 (4) In consultation with the counties and the general public  
20 prepare guidelines as necessary to further specify and  
21 clarify the objectives and policies of the chapter to be  
22 submitted twenty days prior to the convening of any  
23 regular session of the legislature for review,  
24 modification, or enactment by the legislature;

1 (5) Conduct a continuing review of the administration of the  
2 coastal zone management program and of the compliance of  
3 state and county agencies[;] with the objectives and  
4 policies of this chapter;

5 (6) Facilitate public participation in the coastal zone  
6 management program; and

7 [(7) Review state programs within the coastal zone management  
8 area from the shoreline to the seaward limit of the  
9 State's jurisdiction for consistency with the coastal  
10 zone management program; and

11 (8)] (7) Prepare an annual report to the governor and the  
12 legislature which shall include recommendations for  
13 enactment of any legislation necessary to require any  
14 agency to comply with the objectives and policies of  
15 this chapter and any guidelines enacted by the  
16 legislature."

17 SECTION 6. Section 205A-4, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§205A-4 Implementation of objectives, policies, and  
20 guidelines. (a) In implementing the objectives of the coastal  
21 zone management program, the agencies shall give full  
22 consideration [shall be given] to ecological, cultural, historic,  
23 [and] esthetic, recreational, scenic, and open space values, and  
24 coastal hazards, as well as to needs for economic development.

1 (b) The objectives and policies of this chapter and any  
2 guidelines enacted by the legislature shall be binding upon  
3 actions within the coastal zone management area by all  
4 agencies[.], within the scope of their authority."

5 SECTION 7. Section 205A-5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "\$205A-5 Compliance. All agencies shall [amend] ensure that  
8 their [regulations, as may be necessary, to] rules comply with  
9 the objectives and policies of this chapter and any guidelines  
10 enacted by the legislature."

11 SECTION 8. Section 205A-29, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "\$205A-29 Special management area use permit procedure. (a)  
14 The authority in each county, upon consultation with the central  
15 coordinating agency, shall [establish and may amend pursuant to  
16 chapter 91, by rule or regulation] adopt rules under chapter 91  
17 setting the special management area use permit application  
18 procedures, conditions under which hearings must be held, and the  
19 time periods within which the hearing and action for special  
20 management area use permits shall occur. The authority shall  
21 provide for adequate notice to individuals whose property rights  
22 may be adversely affected and to persons who have requested in  
23 writing to be notified of special management area use permit  
24 hearings or applications. The authority shall also provide

1 written public notice once in a newspaper of general circulation.  
2 in the State at least twenty days in advance of the hearing. The  
3 authority may require a reasonable filing fee which shall be used  
4 for the purposes set forth herein.

5 Any rule [or regulation] adopted by the authority shall be  
6 consistent with the objectives, policies, and special management  
7 area guidelines provided in this chapter. Action on the special  
8 management permit shall be final unless otherwise mandated by  
9 court order.

10 (b) No agency authorized to issue permits pertaining to any  
11 development within the special management area shall authorize  
12 any development unless approval is first received in accordance  
13 with the procedures adopted pursuant to this part. For the  
14 purposes of this subsection, county general plan, state land use  
15 district boundary amendments, and zoning changes are not  
16 permits."

17 SECTION 9. Section 205A-32, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[~~§~~205A-32] Penalties. (a) Any person who violates  
20 any provision of [this] part II or part III shall be [subject to]  
21 liable for a civil fine not to exceed \$10,000.

22 (b) In addition to any other penalties, any person who  
23 [performs any development in violation of this part] is violating  
24 any provision of part II or part III shall be [subject to] liable

1 for a civil fine not to exceed [\$500] \$1,000 a day for each day  
2 in which such violation persists.

3 (c) Any civil fine provided under this section may be  
4 imposed by the circuit court or may be imposed by the department  
5 after an opportunity for a hearing under chapter 91. Imposition  
6 of a civil fine shall not be a prerequisite to any civil fine or  
7 other injunctive relief ordered by the circuit court."

8 SECTION 10. Section 205A-41, Hawaii Revised Statutes, is  
9 amended by amending the definition of "shoreline area" to read:  
10 ""Shoreline area" [means] shall include all of the land area  
11 between the shoreline and the shoreline setback line[.] and may  
12 include the area between mean sea level and the shoreline."

13 SECTION 11. Section 205A-43, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§205A-43 Establishment of shoreline setbacks and duties  
16 and powers of the department. (a) Setbacks along shorelines are  
17 established of not less than twenty feet and not more than forty  
18 feet inland from the shoreline. The department shall adopt rules  
19 [within a period of one year after June 22, 1970,] pursuant to  
20 chapter 91, and shall enforce the shoreline setbacks and rules  
21 pertaining thereto.

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



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

4       (2) The department shall review the plans of all applicants  
5       who propose any structure, activity, or facility that  
6       would be prohibited without a variance pursuant to this  
7       part. The department may require that the plans be  
8       supplemented by accurately mapped data and photographs  
9       showing natural conditions and topography relating to  
10      all existing and proposed structures and activities."

11      SECTION 12. Section 205A-44, Hawaii Revised Statutes, is  
12 amended to read as follows:

13      "§205A-44 Prohibitions. (a) The mining or taking of sand,  
14 dead coral or coral rubble, rocks, soil, or other beach or marine  
15 deposits from the shoreline area is prohibited with the following  
16 exceptions:

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

22      (2) Where the mining or taking [of sand by the State or  
23      county is for the replenishment of sand in the shoreline  
24      area, provided that for the purpose of this paragraph an

1 environmental assessment for the proposed project shall  
2 be prepared pursuant to chapter 343, a finding shall be  
3 made by the proposing state or county agency that the  
4 proposed project is in the public interest and will not  
5 have any adverse significant social, economic or  
6 environmental impact, and both a public informational  
7 meeting and public hearing shall be held by the  
8 proposing state or county agency in the affected  
9 community. The public hearing shall be preceded by  
10 public notice of the proposed project not less than  
11 thirty days before the hearing and published on three  
12 separate days in a newspaper of general circulation in  
13 the State or county affected by the proposed project.  
14 The proposing state or county agency shall also notify  
15 in writing the owners or lessees of adjoining,  
16 overlapping, or affected property of the proposed  
17 project;] is authorized by a variance pursuant to this  
18 part;

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

1 (4) The cleaning of the shoreline area for State or county  
2 maintenance purposes, including the clearing for  
3 purposes under [section 46-11.5 and] section 46-12;  
4 provided that the sand removed shall be placed on  
5 adjacent areas unless [such] the placement would result  
6 in significant turbidity.

7 (b) [Except as otherwise provided in this part no structure  
8 or any portion thereof, including but not limited to seawalls,  
9 groins, and revetments, shall be permitted within the shoreline  
10 area; provided that any lawful nonconforming structure existing  
11 on June 22, 1970, shall be permitted; provided further that any  
12 structure which is necessary for safety reasons or to protect the  
13 property from erosion or wave damages shall be permitted. A  
14 structure not conforming to this section but for which a building  
15 permit application has been filed on or before June 22, 1970,  
16 shall also be permitted as a nonconforming structure, subject to  
17 the ordinances and regulations of the particular county.] Except  
18 as provided in this section, structures are prohibited in the  
19 shoreline area without a variance pursuant to this part.

20 Structures in the shoreline area shall not need a variance if:

- 21 (1) They were completed prior to June 22, 1970;  
22 (2) They received either a building permit, board approval,  
23 or shoreline setback variance prior to the effective  
24 date of this Act;

- 1     (3) They are outside the shoreline area when they receive  
2     either a building permit or board approval;
- 3     (4) They are necessary for or ancillary to continuation of  
4     existing agriculture or aquaculture in the shoreline  
5     area on the effective date of this section;
- 6     (5) They are minor structures permitted under rules adopted  
7     by the department which do not affect beach processes or  
8     artificially fix the shoreline and do not interfere with  
9     public access or public views to and along the  
10    shoreline; or
- 11    (6) Work being done consists of maintenance, repair,  
12    reconstruction, and minor additions or alterations of  
13    legal boating, maritime, or watersports recreational  
14    facilities, which are publicly owned, and which result  
15    in little or no interference with natural shoreline  
16    processes;
- 17 provided that permitted structures may be repaired, but shall not  
18 be enlarged within the shoreline area without a variance.

19     [(c) Any nonconforming structure, including but not limited  
20 to residential dwellings, agricultural structures, seawalls,  
21 groins, and revetments may be replaced or reconstructed within  
22 the shoreline area; provided that no nonconforming structure  
23 shall be substantially enlarged or changed to another  
24 nonconforming use within the shoreline area. If the use of any

1 nonconforming structure is discontinued or held in abeyance for a  
2 period of one year, the further continuation of such use shall be  
3 prohibited.]"

4 SECTION 13. Section 205A-45, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "\$205A-45 Shoreline setback lines established by county.

7 (a) The several counties through rules adopted pursuant to  
8 chapter 91 or ordinance[s] may require that shoreline setback  
9 lines be established at [a distance] distances greater than that  
10 established in this part.

11 (b) The several counties through rules adopted pursuant to  
12 chapter 91 or ordinance may expand the shoreline area to include  
13 the area between mean sea level and the shoreline."

14 SECTION 14. Section 205A-46, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "\$205A-46 [Functions of department. (a) The department  
17 shall administer the provisions of this part. It shall review  
18 the plans of all applicants who propose any structure, activity,  
19 or facility which otherwise would be prohibited by this part.

20 The department may require that the plans be supplemented by  
21 accurately mapped data showing natural conditions and topography  
22 relating to all existing and proposed structures, buildings, and  
23 facilities.

1 The department may also require reasonable changes in the  
2 submitted plans in order to obtain optimum compliance practicable  
3 with this part.

4 (b) After reviewing the plans, the department shall  
5 transmit the plans with its recommendations to the authority. The  
6 authority shall grant a variance for such structure, activity, or  
7 facility if, after a hearing pursuant to chapter 91, it finds in  
8 writing, based on the record presented either: (1) that such  
9 structure, activity, or facility is in the public interest; or  
10 (2) that hardship will be caused to the applicant if the proposed  
11 structure, activity, or facility is not allowed on that portion  
12 of the land within the shoreline area. Any variance granted to  
13 the maximum extent practicable shall be subject to such  
14 conditions as will cause the structure, activity, or facility to  
15 result in a minimum interference with natural shoreline processes  
16 and as will provide for safe public shoreline access. The  
17 authority shall render written approval or disapproval within  
18 forty-five days after the hearing on the applicant's plans,  
19 unless such period is extended by written agreement between the  
20 authority and the applicant.) Variances. (a) A variance may be  
21 granted for a structure or activity otherwise prohibited by this  
22 part if the authority finds in writing, based on the record  
23 presented, that the proposed structure or activity is necessary  
24 for or ancillary to:

- 1     (1) Cultivation of crops;
- 2     (2) Aquaculture;
- 3     (3) Landscaping; provided that the authority finds that the  
4         proposed structure or activity will not adversely  
5         affect beach processes and will not artificially fix  
6         the shoreline;
- 7     (4) Drainage;
- 8     (5) Boating, maritime, or water sports recreational  
9         facilities;
- 10    (6) Facilities or improvements by public agencies or public  
11         utilities regulated under section 269;
- 12    (7) Private facilities or improvements that are clearly in  
13         the public interest;
- 14    (8) Private facilities or improvements which will neither  
15         adversely affect beach processes nor artificially fix  
16         the shoreline; provided that the authority also finds  
17         that hardship will result to the applicant if the  
18         facilities or improvements are not allowed within the  
19         shoreline area;
- 20    (9) Private facilities or improvements that may  
21         artificially fix the shoreline; provided that the  
22         authority also finds that shoreline erosion is likely  
23         to cause hardship to the applicant if the facilities or  
24         improvements are not allowed within the shoreline area;

1 provided further that the authority imposes conditions  
2 to prohibit any structure seaward of the existing  
3 shoreline unless it is clearly in the public interest;  
4 or

5 (10) Moving of sand from one location seaward of the  
6 shoreline to another location seaward of the shoreline;  
7 provided that the authority also finds that moving of  
8 sand will not adversely affect beach processes, will  
9 not diminish the size of a public beach, and will be  
10 necessary to stabilize an eroding shoreline.

11 (b) Hardship shall be defined in rules adopted by the  
12 authority under chapter 91. Hardship shall not be determined as  
13 a result of county zoning changes, planned development permits,  
14 cluster permits, or subdivision approvals after the effective  
15 date of this Act, or as a result of any other permit or approval  
16 listed in rules adopted by the authority.

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

- 19 (1) To maintain safe lateral access to and along the  
20 shoreline or adequately compensate for its loss;
- 21 (2) To minimize risk of adverse impacts on beach processes;
- 22 (3) To minimize risk of structures failing and becoming  
23 loose rocks or rubble on public property; and



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

3       SECTION 15. Section 205A-49, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "\$205A-49 Adoption of rules. Each agency charged with  
6 carrying out this part shall adopt rules [under chapter 91, as  
7 necessary, to implement or comply with this part by June 30,  
8 1987.] necessary to implement or comply with this part by July 1,  
9 1990. All rules shall be adopted under chapter 91."

10       SECTION 16. Section 205A-47, Hawaii Revised Statutes, is  
11 repealed.

12       ["\$205A-47 Exemptions. Tunnels, canals, basins, and  
13 ditches, together with associated structures used by public  
14 utilities as the term is defined in section 269-1, wharves,  
15 docks, piers, and other harbor and waterfront improvements and  
16 any other maritime facility and water sport recreational  
17 facilities may be permitted within the shoreline area; provided  
18 that the plans are submitted for review and are approved by the  
19 authority after a public hearing has been held and that the  
20 appropriate state body has found that the proposed structures  
21 will result only in a minimum interference with natural shoreline  
22 processes; provided further that any such structure constructed  
23 by a governmental body shall be exempt from the provisions of  
24 this part except as to the requirement that two public hearings

1 shall be held by the governmental body charged with such  
2 construction, once when the project is first conceived and again  
3 when the project is substantially designed and planned, but prior  
4 to the letting of the contract. Repair, strengthening,  
5 reinforcement, and maintenance of fishponds, and improvements for  
6 aquaculture farms shall be exempt from this part, upon issuance  
7 of a permit or waiver of the requirements by the board of land  
8 and natural resources."]

9 SECTION 17. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun, before its effective date.

12 SECTION 18. Statutory material to be repealed is bracketed.  
13 New statutory material is underscored.

14 SECTION 19. This Act shall take effect upon its approval.

**APPENDIX C**

**SHORELINE SETBACK RULES & REGULATIONS**

**CITY AND COUNTY OF HONOLULU**

SHORELINE SETBACK RULES AND REGULATIONS OF THE  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

RULE 1. AUTHORITY

Pursuant to the authority of Chapter 205, Hawaii Revised Statutes, as amended, and Ordinance No. 4631 of the City and County of Honolulu, the Rules and Regulations hereinafter contained are hereby established. They shall apply to all the shores within the City and County of Honolulu, State of Hawaii.

RULE 2. PURPOSE

Growing population and expanding development have brought about numerous cases of encroachment of structures upon the shore. Many of these structures have disturbed the natural processes and caused erosion of the shore. Concrete masses along the shore are contrary to the policy for the preservation of the natural shore and open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shore and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks.

RULE 3. TITLE

These Rules and Regulations may be referred to as the "SHORELINE SETBACK RULES AND REGULATIONS OF THE CITY AND COUNTY OF HONOLULU."

RULE 4. METHODS WHEREBY PUBLIC  
MAY OBTAIN INFORMATION

4.1 Where Obtained

The public may obtain information as to matters within the jurisdiction of the City and County of Honolulu, by inquiring at:

- (a) The office of the City Clerk, City Hall, where there are on file all rules of the Agency; or
- (b) The office of the Department of Land Utilization, Honolulu, Hawaii 96813. All rules, orders or opinions of the Agency are on file and available for public inspection at said office. Copies of compilations of rules and supplements thereto are available to the public at a price to be fixed by the Agency to cover mailing and publication costs.

#### 4.2 Submittals or Requests for Information

Such inquiry may be made in person at said offices during business hours, or by submitting a request for information in writing to the Director of Land Utilization, City and County of Honolulu, Hawaii 96813.

#### RULE 5. PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

##### 5.1 Petition

Any interested person may petition the Agency requesting the adoption, amendment, or repeal of any rule of the Agency.

##### 5.2 Submission

The petition shall be submitted in ten (10) copies to the Director of Land Utilization, City and County of Honolulu, Honolulu, Hawaii 96813. It shall include:

- (a) A statement of the nature of the petitioner's interest.
- (b) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.
- (c) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal.

##### 5.3 Disposition of Petition

The Agency shall within thirty (30) days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with HRS, Sec. 91-3, for the adoption, amendment, or repeal of the rules, as the case may be.

#### RULE 6. DECLARATORY RULINGS BY AGENCY

##### 6.1 Petition

Any interested person may petition the Agency for a declaratory order as to the applicability of any statute or ordinance relating to the Agency, or of any rule or order of the Agency.

##### 6.2 Submission of Petition

The petition shall be submitted in duplicate to the Director of Land Utilization, City and County of Honolulu, Honolulu, Hawaii 96813.

- (a) The name, address, and telephone number of the petitioner.
- (b) A statement of the nature of petitioner's interest, including reasons for the submission of the petition.

- (c) A designation of the specific provision, rule, or order in question.
- (d) A complete statement of facts.
- (e) A statement of the position or contention of the petitioner.
- (f) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

#### 6.3 Rejection of Petition

Any petition which does not conform to the foregoing requirements may be rejected.

#### 6.4 Refusal to Issue Declaratory Ruling

The Agency may for good cause refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the Agency may so refuse where:

- (a) The question is speculative or purely hypothetical and does not involve existing fact, or facts which can reasonably be expected to exist in the near future.
- (b) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief.
- (c) The issuance of the declaratory ruling may adversely affect the interests of the City, the Agency, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.
- (d) The matter is not within the jurisdiction of the Agency.

#### 6.5 Referral to Other Agencies

Where any question of law is involved, the Agency may refer the matter to the Corporation Counsel. The Agency may also obtain the assistance of other agencies, where necessary or desirable.

#### 6.6 Notification of Petitioner

Upon the disposition of his petition, the petitioner shall be promptly informed thereof by the Director.

#### 6.7 Status of Orders

Orders disposing of petitions shall have the same status as other Agency orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist.

RULE 7. DEFINITIONS

For the purpose of these Rules and Regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

- a. "Agency" means the Department of Land Utilization, City and County of Honolulu.
- b. "City" means the body politic and corporate by the name of "City and County of Honolulu."
- c. "Coastal Engineer" means a registered professional engineer qualified by training and experience to design, plan, or propose methods and means of imposing structures and facilities upon shore or ocean environments in such a manner that such environments are protected.
- d. "Commission" means the Land Use Commission of the State of Hawaii.
- e. "Director" means the Director of Land Utilization, City and County of Honolulu.
- f. "Nonconforming structure" means any structure which was previously lawful and existing within the shoreline setback area prior to the effective date of Act 136, SLH 1970, or June 22, 1970.
- g. "Nonconforming use" means the use of a building or structure, or of a parcel of land, lawfully existing within the shoreline setback area prior to the effective date of Act 136, SLH 1970, or June 22, 1970.
- h. "Preliminary Construction Plan" means a detailed construction drawing prepared to an appropriate scale, showing the design of the proposed construction.
- i. "Revetment" means a facing of stone, concrete, blocks, or similar material built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.
- j. "Shoreline" means the upper reaches of the wash of waves, other than storm and tidal waves, usually evidenced by the edge of vegetation growth, or the upper line of debris left by the wash of waves. A shoreline shall not be established along berms, causeways, revetments, and similar structures which enclose fish ponds, pools, tidal basins, and similar facilities. In addition, a shoreline shall not be established along harbors, inland waterways, marinas, inland ponds, and lakes.
- k. "Shoreline area" means all of the land area between the shoreline and the shoreline setback line.
- l. "Shoreline setback line" means that line established by the State Land Use Commission or the City and County of Honolulu running inland from and parallel to the Shoreline at a horizontal plan.

- m. "Special Management Area Use Permit (SMP)" means an action by the authority authorizing development, the valuation of which exceeds \$65,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.
- n. "Structure" means anything constructed or erected with a fixed location on the ground, or requiring a fixed location on the ground, or attached to something having or requiring a fixed location on the ground.
- o. "Vegetation growth" means any plant, tree, shrub, grass, or groups, clusters or patches of the same, rooted and growing.

RULE 8. INFORMAL DISCUSSION

A person seeking a variance from any provision of these Rules and Regulations with respect to a specific parcel or parcels of land may discuss the matter informally with the Director or his authorized representative.

RULE 9. SHORELINE SETBACK LINE

9.1 Lines Established

Shoreline setback lines are established throughout the City and County of Honolulu by the Commission at 40 feet inland from the upper reaches of the wash of waves other than storm and tidal waves, except that such shoreline setback lines shall be 20 feet inland on any land parcel of record when any one or more of the following conditions exist:

- (a) Where the average depth of the parcel, as measured from the shoreline or the seaward boundary of the parcel, whichever is less, is less than 100 feet. The average depth of the parcel shall be determined by standard geometrics of a rectilinear divisions of the total lot. The Director's finding relating to determination of the average depth shall be final.
- (b) Where the parcel area is less than the minimum lot area required by Chapter 21 of the Revised Ordinances of the City and County of Honolulu, as amended. This provision shall be applicable only in zoning districts with minimum lot sizes under the Comprehensive Zoning Code of 7,500 square feet or less.
- (c) Where the buildable area of the parcel is reduced to less than 50 percent of the parcel area after applying the 40-foot shoreline setback line and all State requirements and the various yard, cross slope and other requirements of Chapter 21 of the Revised Ordinances of Honolulu, as amended. The parcel area shall be exclusive of any vehicular or pedestrian access easements and open drainage channel easements and measured within the boundaries of the lot inland of the shoreline and the shoreline itself.



9.2 No Reduction of Shoreline Setback Line

A 40-foot shoreline setback line initially established by the State Land Use District Regulations of the Commission shall not be adjusted or moved under the provisions of Rule 9.1, 9.1(a), 9.1(b), or 9.1(c) by virtue of any subsequent erosion, accretion, subdivision, change in zoning, or change in land use affecting the parcel.

9.3 Shoreline and Setback Lines to be Shown on Maps, etc.

Shoreline and setback lines shall be shown on all maps, plats, plans, construction drawings, documents, and any similar material, as a condition precedent to final approval. All permits and approvals required to subdivide, convey, develop, use, grade, or sell any portion of lands subject to shoreline setbacks shall be granted only upon approval under these Regulations by the Director.

9.4 Parcels Adjacent Narrow Shoreline Parcels

Parcels separated from the shoreline by an intervening narrow parcel, including beach reserves, shall be subject to these Regulations when any part of the parcel so separated falls within the shoreline setback.

RULE 10. SHORELINE LOCATION AND MEASUREMENT

10.1 Instrument Surveys

Actual field location of the shoreline in accordance with the definitions herein, along with existing property lines, shall be located, marked, and platted by instrument surveys by a land surveyor registered in accordance with Chapter 464, Hawaii Revised Statutes, as amended. Survey maps prepared by the registered land surveyor shall bear his signature, the date of his field survey, and confirming statement and signature of the State Land Surveyor. The State Land Surveyor's signature shall be placed over the following statement on the map (print): "The shoreline as located and certified and delineated in red is hereby confirmed as being the actual shoreline as of                     (date)                    ." Shoreline setbacks shall be measured inland from the shoreline as determined and certified by the Registered Land Surveyor and as confirmed by the Hawaii State Land Surveyor, Survey Division, Department of Accounting and General Services.

10.2 Actual Field Surveys

An application for any construction or use relative to lands adjacent to and inland of the shoreline under these Rules and Regulations shall be accompanied by a map showing the location of a shoreline based upon actual field surveys conducted by a registered land surveyor within twelve (12) months prior to filing. If an application for governmental action is withdrawn or held in abeyance at the request of the applicant or due to noncompliance with other provisions of these Rules and Regulations in order to complete the application, or if a decision is not rendered for just and due cause by the Agency, the shoreline survey data shall become

void two (2) years from the date of the original field survey. Notwithstanding the provisions of this paragraph, the Director may require up-to-date surveys upon his determination that significant changes have occurred along the shore.

10.3 Authority to Waive Instrument Surveys

The Director may waive the requirements for instrument surveys as indicated by Rule 10.1 when the applicant submits evidence that the proposed construction is located 55 feet or more and 35 feet or more inland from the purported shoreline for 40 feet and 20 feet shoreline setbacks, respectively.

Request for such waivers shall be made in writing with supporting data. The Director shall take action in writing to approve or disapprove.

RULE 11. ACTIVITIES SUBJECT TO THESE  
RULES AND REGULATIONS

All proposed public and private construction or subdivision involving land within the shoreline setback, and all applications thereof for permits, reviews, approvals, and any other similar procedures for governmental review are subject to these Rules and Regulations. Construction shall include, but not be limited to remodeling, reconstruction, or replacement. Approval based upon these Rules and Regulations does not relieve the applicant of responsibility for compliance with other applicable statutes, codes, ordinances, or rules and regulations.

RULE 12. AUTHORITY OF THE AGENCY  
ALONG THE SHORE

12.1 Type of Activity

All construction, improvements, grading, clearing, grubbing, filling, and such related activities within the shoreline setback shall be subject to review and approval of the Director under these Rules and Regulations. Land seaward of the certified shoreline is not subject to these Rules and Regulations. Where other agencies hold jurisdiction over adjacent inland land, review by these agencies as well as by the Director is required.

12.2 Emergency Work

Nothing contained in these Regulations shall be deemed to prevent the strengthening or restoring to a safe condition of any building, structure or facility, provided, however, that approval of the Director is obtained. The Director shall seek and obtain the advice and counsel of the Director and Chief Engineer or the Director and Building Superintendent of the City and County of Honolulu prior to granting such approvals.

RULE 13. PROHIBITIONS

13.1 Removal Prohibited

The removal of sand, coral, rocks, soil, shells, or other beach compositions or natural plants and materials within the shoreline setback is prohibited. Such removal shall be prohibited for any purpose except for reasonable domestic, non-commercial use which shall not involve construction, repairs, reconstruction, grading, or filling.

13.2 Topography Change

Removal of sand, coral, etc., enumerated in Rule 13.1 for reasonable domestic, non-commercial use shall not be made in any manner or extent so as to change the basic topography, physical appearance, or configuration of the shoreline setback.

13.3 Structure Not Permitted

No structure or any portion thereof, including but not limited to seawalls, groins, and revetments, whether built above, on, or below the ground surface, is permitted within the shoreline setback unless indicated otherwise under these Rules and Regulations. Construction of facilities that are accessory or incidental to structures located in areas immediately adjacent to the shoreline setback shall not be permitted. Roads, streets, driveways, paved walkways, utility lines (whether overhead, surface, or underground), grading and filling work, and any and all other construction work whether related to structures or not, are not permitted within the shoreline setback.

13.4 Permissible Mining

Any sand mining operation within the shoreline setback which has been legally in operation for a period of at least two years immediately prior to June 22, 1970, may temporarily continue until July 1, 1975. Continued operation during this period is contingent upon not exceeding the scope of operations existing on June 22, 1970.

RULE 14. FACILITIES PERMITTED WITHIN  
THE SHORELINE SETBACK

14.1 Protection of Property

Special structures necessary for safety reasons to remedy conditions that require such structures or to protect property from erosion or wave damages shall be permitted upon compliance with all applicable laws, ordinances, codes, and regulations and upon approval by the Director. The Director shall not approve the construction of such structures within the shoreline setback without the concurrence of the Director and Chief Engineer of the Department of Public Works or the Director and Building Superintendent of the City and County of Honolulu.

#### 14.2 Certification Necessary

All such applications for approval by the Director shall be accompanied by preliminary construction plans and a certification report from a Coastal Engineer indicating that: (1) the structure is needed for safety reasons or to protect the property from erosion or wave damages, (2) the proposed construction is the best alternative of several investigated, and (3) the proposed construction will not cause any adverse effect on or significant change to, the shoreline. Upon approval of preliminary construction plans, the applicant may proceed with final construction plans and documents for review and approval in accordance with other applicable laws, ordinances, codes, regulations, and procedures.

Both the preliminary and final construction plans shall reference all elevations to a Mean Sea Level (MSL) or a Mean Lower Low Water (MLLW) datum. The horizontal location of the proposed structure shall be referenced to some identifiable point, and the nearshore topography, seaward of the structure to the shoreline, shall be included.

#### 14.3 Nonconforming Structure

Any lawful nonconforming structure existing within the shoreline setback on June 22, 1970 shall be permitted. A structure not conforming to this Section but for which a building permit application or other appropriate permit application has been filed on or before June 22, 1970 shall also be permitted as a nonconforming structure, subject to existing ordinances and regulations of the City and County of Honolulu.

#### 14.4 Enlargement and Discontinuance

Any nonconforming structure, driveway, roadway, or utility may be replaced, removed, or reconstructed upon compliance with applicable State and County requirements within the shoreline setback; provided, that no such nonconforming structure shall be substantially enlarged or altered to another nonconforming use. If the use of any nonconforming structure is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited.

#### 14.5 Extended Use of Land

No nonconforming use of land shall be enlarged or increased or extended to occupy a greater area of land than was occupied on June 22, 1970. No nonconforming use of land shall be moved in whole or in part to any portion of the lot within the shoreline setback.

#### 14.6 Exempted Improvements

Upon the submittal of preliminary construction plans, data, and certification reports by a Coastal Engineer, and a public hearing conducted by the Director, private construction of tunnels, canals, basins, and ditches, together with associated structures used by public utilities, wharves, docks, piers, and other harbor and waterfront improvements and any other maritime facility and water sport recreational facilities may be

permitted within the shoreline setback. The Director may approve of such private construction plans only upon finding that the proposed structures will result in a minimum interference with natural shoreline processes.

Government construction of facilities as indicated in the paragraph immediately preceding shall be exempt from the provisions of this part. The governmental body charged with the construction shall, however, hold two public hearings as follows:

- (a) When the project is first conceived, and
- (b) When the project is substantially designed and planned, but prior to the letting of the construction contract.

Maintenance and repair work on existing and permitted facilities, whether public or private, shall be exempt from these Rules and Regulations; provided, however, that other applicable codes, ordinances, laws, regulations, or rules are complied with.

#### 14.7 Construction on State Land

Facilities indicated in Section 14.6, constructed on State land by the State shall be submitted for review and information of the Director. The Director shall make a finding as to whether or not the proposed construction as indicated on the plans is in conflict with any ordinances, zoning laws, and building code of the City and County of Honolulu. The State shall not proceed with such construction until certification by the Director that there are no such conflicts.

### RULE 15. ADMINISTRATION OF THESE RULES AND REGULATIONS

#### 15.1 Review of Plans

The Director shall review and approve or disapprove all plans submitted in accordance with these Rules and Regulations. The Director may require additional plans or data in addition to those specified. Changes in any plans or data submitted in order to obtain optimum compliance practicable to these Rules and Regulations and that are reasonable and necessary may be required by the Director.

#### 15.2 Application for Variance

The Director shall receive and review plans for proposed structures, facilities, or activities that are prohibited within the shoreline setback upon the submission of adequate plans and data attached to a properly executed application form requesting a variance through the Department of Land Utilization of the City and County of Honolulu. The application must be accompanied by a fee of one hundred dollars (\$100.00) to cover the cost of publishing hearing notices. In the event of a joint public hearing, only one fee will be required. Certification by the owner

or lessee of the property authorizing and condoning the application for a variance from these Rules and Regulations must be provided by the applicant or agent.

15.3 Justification for Variance

Variance applications from these Rules and Regulations shall be accompanied by accurate written statements to substantiate that:

- (a) the structure, activity, or facility requested is in the public interest, or
- (b) hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed on that portion of the land within the shoreline setback.

15.4 Reports from Other Agencies

Within 30 days of the receipt of a complete application, the Director shall assess the environmental effects of the proposed variance in accordance with the provisions of Chapter 343, Hawaii Revised Statutes, and shall determine if an Environmental Impact Statement is required.

15.5 Public Hearing

Within forty-five (45) days of the completion of the environmental requirement (Negative Declaration or an accepted Environmental Impact Statement), or in the case of a concurrent Shoreline Setback Variance/Special Management Area Use Permit (SMP) application, within sixty (60) days of receipt of the SMP application, the Director shall hold a public hearing on the matters.

15.6 Decision

Within forty-five (45) days after the hearing on the applicant's claims, the Director shall render a written decision for approval or disapproval unless such period is extended by written agreement between the Director of Land Utilization and the applicant. In cases where action is required by the Council on an SMP, the Director shall forward both recommendations to the Council in accordance with the provisions of the Special Management Area ordinance. The Council, in the case of a shoreline variance and SMP, may grant a variance which may be subject to such conditions as will cause the structure, activity, or facility to result in minimum interference with natural shoreline processes, only upon finding affirmatively on Rules 15.3(a) and 15.3(b) of these Rules and Regulations.

RULE 16. ENFORCEMENT

The Director shall enforce the shoreline setbacks and these Rules and Regulations.

RULE 17. PENALTIES

Any person who violates any provision for shoreline setbacks or these Rules and Regulations shall be fined not more than one thousand dollars (\$1,000). Each day of a continuing violation after conviction shall be a separate offense.

RULE 18. VALIDITY

If any section or part of these Rules and Regulations is held to be invalid for any reason whatsoever, such invalidity shall not affect the validity of the remaining sections or part of these Rules and Regulations.

RULE 19. EFFECTIVE DATE OF THESE  
RULES AND REGULATIONS

These Rules and Regulations shall become effective upon their approval by the Mayor of the City and County of Honolulu and ten (10) days after filing with the City Clerk.

Approved this 13<sup>th</sup> day of

June, A.D. 1983.

for Andrew P. Chung  
EILEEN R. ANDERSON, Mayor  
City and County of Honolulu

NOTICE OF PUBLIC HEARING PUBLISHED IN MONDAY ADVERTISER  
ON MAY 2, 1983.

APPROVED AS TO FORM:

Jane A. Howell  
Deputy Corporation Counsel

Date 6-7-83

Received this 14th day of June, A.D. 1983.

Raymond Pua  
for RAYMOND PUA  
City Clerk

**APPENDIX D**

**SHORELINE MANAGEMENT AREA (SMA)**

**RULES & REGULATIONS**

**CITY AND COUNTY OF HONOLULU**



CHAPTER 33.  
SPECIAL MANAGEMENT AREA FOR THE  
CITY AND COUNTY OF HONOLULU.

Article 1. General Provisions.

Sec. 33-1.1. Authority.

Pursuant to authority conferred by chapter 205A, Hawaii Revised Statutes, the regulations and procedures hereinafter contained are hereby established and shall apply to all lands within the special management area of the City and County of Honolulu. (Am. Ord. 84-4, 85-105)

Sec. 33-1.2. Purpose.

It is the City and County of Honolulu's policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. Special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and foreclosure of management options, and to insure that adequate public access is provided to public owned or used beaches, recreation areas, and natural reserves, by dedication or other means. (Am. Ord. 84-4)

Sec. 33-1.3. Definitions.

Whenever the following words are used in this chapter, they shall have the meaning ascribed to them in this section. These definitions are intended to clarify but not replace or negate the definitions used in chapter 205A, Hawaii Revised Statutes.

- (1) "Agency" means the department of land utilization, City and County of Honolulu.
- (2) "Applicant" includes any individual, organization, partnership, firm, association, trust, estate, or corporation including any utility, and any agency of Federal, State and County government.
- (3) "Council" means the city council of the City and County of Honolulu, which body shall act as the "authority" under chapter 205A, Hawaii Revised Statutes.
- (4) "City and County" means the City and County of Honolulu.
- (5) "Crops" mean agricultural produce or part(s) of plants or trees cultivated for commercial or personal use.
- (6) "Development" means, any of the uses, activities, or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (B).

Amended:  
Ordinance  
87-73

## (A) "Development" includes the following:

- (i) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
  - (ii) Grading, removing, dredging, mining, or extraction of any materials;
  - (iii) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
  - (iv) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
  - (v) Construction, reconstruction, demolition, or alteration of the size of any structure.
- (B) "Development" does not include the following:
- (i) Construction of a single-family residence that is not part of a larger development;
  - (ii) Repair or maintenance of roads and highways within existing rights-of-way;
  - (iii) Routine maintenance dredging of existing streams, channels, and drainage ways;
  - (iv) The 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;
  - (v) Zoning variances, except for height, density, parking and shoreline setback;
  - (vi) Repair, maintenance, or interior alterations to existing structures;
  - (vii) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
  - (viii) The use of any land for the purpose of cultivating, planting, growing, and harvesting of 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 subject to review by the authority in accordance with paragraph (C);
  - (ix) The transfer of title to land;
  - (x) The creation or termination of easements, covenants, or other rights in structures or land; and
  - (xi) The subdivision of land into lots greater than twenty acres in

(C) Whenever the authority finds that any use, activity, or operation excluded in paragraph (B) is or may become part of a larger project, the cumulative impact of which may have a significant environmental or ecological effect on the special management area, that use, activity, or operation shall be defined as "development" for the purpose of this part.

- (7) "Director" means the director of the department of land utilization, City and County of Honolulu.
- (8) "EIS" means an informational document prepared in compliance with the Environmental Quality Commission's Rules and Regulations implementing chapter 343, Hawaii Revised Statutes.
- (9) "Emergency permit" means special management area emergency permit as defined in section 205A-22(5), Hawaii Revised Statutes.
- (10) "Minor permit" means special management area minor permit as defined in section 205A-22(6), Hawaii Revised Statutes.
- (11) "Shoreline" means the upper reaches of the wash of the waves, other than storm and tidal waves, usually evidenced by the edges of vegetation growth or the upper limit of debris left by the wash of the waves, or as delineated on a shoreline survey which has been certified in accordance with the City and County Shoreline Setback Rules and Regulations.
- (12) "Shoreline management permit" shall also mean special management area use permit.
- (13) "Shoreline survey" means that survey required under the Shoreline Setback Rules and Regulations of the City and County of Honolulu adopted pursuant to section 205-32, Hawaii Revised Statutes.
- (14) "Special management area" means the land extending inland from the shoreline, as established in this ordinance and delineated on the maps established by the council and filed with the council and agency pursuant to section 205A-23, Hawaii Revised Statutes.
- (15) "Special management area minor permit" means an action by the agency authorizing development, the valuation of which is not in excess of \$65,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.
- (16) "Special management area use permit" means an action by the authority authorizing development, the valuation of which exceeds \$65,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.
- (17) "Structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission tower and distribution line.

(18) "Valuation" shall be determined by the agency 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 in paragraph (A) above, the fair market value of the development. (Am. Ord. 84-4, 85-105)

**Article 2. Special Management Area.**

**Sec. 33-2.1. Adoption.**

The special management area, as established by the council in this chapter and shown on the special management area maps, which maps are hereby adopted and made a part of this chapter and filed with the council on the effective date of this chapter, shall be the City and County's official special management area to be administered and enforced under the provisions of this chapter. (Am. Ord. 84-4, 85-105)

**Sec. 33-2.2. Included Area.**

The special management area shall include those areas of the Island of Oahu so designated on the maps; the islands within three miles offshore of Oahu, including but not limited to those islands shown on the maps; and the Northwestern Hawaiian Islands, which include Nihoa, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll and Kure Atoll. (Am. Ord. 85-105)

**Article 3. Objectives And Policies, Review And Procedural Guidelines.**

**Sec. 33-3.1. Objectives And Policies.**

The objectives and policies of this chapter shall be those contained in section 205A-2, Hawaii Revised Statutes. (Am. Ord. 84-4)

**Sec. 33-3.2. Review Guidelines.**

The following guidelines shall be used by the council or its designated agency 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 council to insure that:

- (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, landslides, erosion, siltation, or failure in the event of earthquake.

(2) No development shall be approved unless the council has first found that:

(A) 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 and safety, or compelling public interest. Such adverse effect 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) The development is consistent with the objectives and policies set forth in section 33-3.1 and area guidelines contained in section 205A-26, Hawaii Revised Statutes; and

(C) The development is consistent with the County General Plan, development plans, zoning and subdivision codes and other applicable ordinances.

(3) The council 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 area and the mean high tide line where there is no beach;

(D) Any development which would substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast;

(E) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land. (Am. Ord. 84-4)

**Sec. 33-3.3. Procedural Guidelines.**

All development within the special management area shall be subject to assessment by the agency under the provisions of this chapter. Such assessment shall be pursuant to the objectives, policies and guidelines set forth herein.

**(1) Consultation.**

Any applicant contemplating development within the special management area shall contact the agency for information regarding procedures and general information which may have a direct influence on his proposed development.

Any development which has been assessed under National Environmental Policy Act or under chapter 343, Hawaii Revised Statutes, and for which a negative declaration has been filed or a required EIS has been accepted may apply directly for a special management area use permit pursuant to section 33-5.1, to waive the assessment procedures in section 33-3.3(2).

**(2) Assessment Procedures.****(A) Filing.**

Any applicant subject to assessment shall be responsible for filing the following with the agency:

- (i) A completed application form (to be obtained from the agency);
- (ii) A tax map key identification of the property on which the applicant proposes his development.
- (iii) A plot plan of the property, drawn to scale.
- (iv) A written description of the proposed development and a statement of objectives, and an estimate of the valuation of the development.
- (v) A written description of the affected environment which addresses the development's technical and environmental characteristics.
- (vi) A shoreline survey if the parcel abuts the shoreline.
- (vii) Any other relevant plans or information pertinent to the analysis of the development required by the agency.

**(B) Assessment.**

The director shall assess the proposal upon the applicant's compliance with section 33-3.3(2)(A) based on the following criteria:

- (i) The valuation or fair market value of the development.
- (ii) The potential effects and the significance of each effect according to the Significance Criteria established by section 33-4.1.

**(C) Determination.**

(i) The director shall, within thirty days after receipt of the request for assessment, notify the applicant by mail, with a copy to the council, that he has determined the proposal to:

- (aa) be exempt from the requirements of this chapter;
- (bb) require a special management area minor permit;
- (cc) require a special management area use permit, but not to require an environmental impact statement; or
- (dd) require a special management area use permit, and to require an environmental impact statement.

(ii) The director shall declare a development proposal exempt where he finds that the proposal is not defined as development under section 33-1.3(6)(b).

(iii) The director shall issue a special management area minor permit where he finds that the development proposal:

- (aa) has a valuation or fair market value not in excess of \$65,000; and
  - (bb) will not significantly affect the special management area.
- (iv) The director shall declare that a special management area use permit is required, and shall issue a negative declaration which shall be filed with the council and with the Environmental Quality Commission if such is required under the provisions of chapter 343, Hawaii Revised Statutes, where he finds that the proposal:

(aa) has a valuation or fair market value in excess of \$65,000; and

(bb) will not significantly affect the special management area; and

or (cc) is supported by studies which, in the director's judgment, sufficiently describe the potential environmental effects on the special management area.

(v) The director shall declare that a special management area use permit is required, and shall issue an environmental impact statement preparation notice with the council, regardless of the valuation or fair market value of the proposal where he finds that the proposal may significantly affect the special management area and that sufficient information to evaluate this impact is not available.

(vi) The Negative Declaration and Environmental Impact Statement preparation notices shall contain all the information required to be presented under the Environmental Quality Commission Rules and Regulations.

(vii) The director shall assure that the public is informed of his determinations on special management area use permits through publication of notices in the EQC Bulletin or another publication. (Am. Ord. 84-4)

#### Article 4. Significance Criteria And Procedures.

##### Sec. 33-4.1. Significance Criteria.

In assessing the significance of a development, the director shall confine his criteria to the objectives, policies and guidelines in article 3 of this chapter. (Am. Ord. 84-4)

##### Sec. 33-4.2. Procedures.

In processing a negative declaration or environmental impact statement, the director shall adhere to the procedures set forth in chapter 343, Hawaii Revised Statutes, and the regulations adopted thereunder by the Environmental Quality Commission. In the event that a development is not subject to the chapter, but the director requires an EIS, filing shall be with the agency. (Am. Ord. 84-4)

#### Article 5. Permit Processing Procedures.

##### Sec. 33-5.1. Required Materials.

Any applicant who has received a determination under section 33-3.3(2)(C) that this proposal requires a special management area use permit or when such determination has been waived under sec. 33-3.3(1) shall submit the following to the agency:

- (1) A written notification to proceed with the special management area use permit processing.
- (2) A copy of either the negative declaration, or a copy of a completed and accepted EIS.
- (3) Any additional information as to the areas of critical concern as deemed necessary by the agency.
- (4) A \$100 filing and processing fee. Such filing fee shall be waived for public agency projects. (Am. Ord. 84-4)

##### Sec. 33-5.2. Acceptance.

Upon compliance with the foregoing procedures, the director shall notify the applicant by certified mail within 7 days of receipt that the application has been accepted. The director shall also concurrently provide the council with the date of acceptance of the application and a brief description of the proposal contained in the application. (Am. Ord. 84-4)

##### Sec. 33-5.3. Public Hearings.

The agency, pursuant to powers of delegation given to the city council under chapter 205A, Hawaii Revised Statutes, shall hold a public hearing at a date set no less than twenty-one nor more than sixty calendar days after the date on which the application is accepted, unless the sixty-day period is waived by the applicant. The agency shall give adequate notice to the pertinent neighborhood boards, the owners of all property within 300 feet of the affected property as well as to all owners of all property described in the application. The agency shall give written notice, once in a newspaper of general circulation in the County and once in a newspaper of general circulation in the State, at least twenty calendar days in advance. The notice shall state the nature of the proposed development for which a permit application is made and of the time and place of public hearings.

The hearing shall be held in the area in which the development is proposed. Whenever possible, any such hearing shall be held jointly and concurrently with any other hearing required for the same development. (Am. Ord. 84-4)

##### Sec. 33-5.4. Agency Recommendation.

Upon conclusion of the public hearing, the agency shall transmit its findings and recommendations thereon, within ten working days, directly to the city council for its consideration and decision. (Am. Ord. 84-4)

##### Sec. 33-5.5. Action By The Council.

The council shall grant with conditions, or deny any application for special management area use permit within sixty calendar days after the agency's public hearing, unless an extension has been agreed to by the applicant. (Am. Ord. 84-4)

#### Article 6. Prohibition.

##### Sec. 33-6.1. Permit Required.

No development or structure shall be constructed within the special management area without first obtaining a special management area use permit, a minor permit, or being exempted pursuant to the provisions of this chapter. (Am. Ord. 84-4)

##### Sec. 33-6.2. Permit To Precede Other Permits.

No agency authorized to issue permits pertaining to any development within the special management area established by this chapter shall authorize any development unless approval is first received pursuant to the provisions of this chapter. For purposes of this section, county general

plans, development plans, state land use district boundary amendments, and zoning changes are not permits. (Am. Ord. 84-4)

**Article 7. Exemptions.**

**Sec. 33-7.1. Emergency Permits.**

In cases of emergency repairs to existing public utilities including, but not limited to, flood control structures, water, sewer, gas, and electric transmission lines and highways, the respective governmental agency or public utility company is exempt from obtaining a permit pursuant to the requirements of this chapter. Two reports on such repair projects, the valuation of which exceeds \$65,000, shall be recorded with the agency, one within three days after the start of the project and the other upon its completion.

In the event an impending disaster or disaster has been declared under chapter 13, article 30, Revised Ordinances of Honolulu, 1978, as amended, or under chapters 127 and 128, Hawaii Revised Statutes, the requirements of this chapter shall be waived. (Am. Ord. 84-4)

**Article 8. Penalties.**

**Sec. 33-8.1. Civil Fine.**

Any person who violates any provision of this chapter shall be subject to a civil fine not to exceed \$10,000. (Am. Ord. 84-4)

**Sec. 33-8.2. Additional Fines.**

In addition to any other penalties, any person who performs any development in violation of this part shall be subject to a civil fine not to exceed \$500 a day for each day in which such violation persists. (Am. Ord. 84-4)

**Article 9. Appeals.**

**Sec. 33-9.1. Appeal In Accordance With Statute.**

Appeals shall be in accordance with section 205A-6, Hawaii Revised Statutes. (Am. Ord. 84-4)

**Article 10. Severability.**

**Sec. 33-10.1. Invalid Provisions.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of conditions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. (Am. Ord. 84-4)

(SMA)

ORDINANCE NO. 87-73

BILL NO. 42 (1987)  
(CD-2)

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 33, REVISED ORDINANCES OF HONOLULU 1978 (1983 EDITION), AS AMENDED, RELATING TO THE SPECIAL MANAGEMENT AREA OF THE CITY AND COUNTY OF HONOLULU.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Chapter 33, Revised Ordinances of Honolulu 1978 (1983 Edition), is hereby amended in the following respects:

a. By amending Section 33-1.3 to read as follows:

Sec. 33-1.3. Definitions.

[[1]] "Agency" means the department of land utilization, City and County of Honolulu.

[[2]] "Applicant" includes any individual, organization, partnership, firm, association, trust, estate, or corporation including any utility, and any agency of Federal, State and County government.

[[3]] "Council" means the city council of the City and County of Honolulu, which body shall act as the "authority" under chapter 205A, Hawaii Revised Statutes.

[[4]] "City and County" means the City and County of Honolulu.

[[5]] "Crops" mean agricultural produce or part(s) of plants or trees cultivated for commercial or personal use.

[[6]] "Development" means, any of the uses, activities, or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (B).

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CITY & COUNTY OF HONOLULU

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(A) "Development" includes but is not limited to the following:

(i) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;

(ii) Grading, removing, dredging, mining, or extraction of any materials;

(iii) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;

(iv) Change in the intensity of use of water, ecology related thereto, or of access thereto; and

(v) Construction, reconstruction, demolition, or alteration of the size of any structure.

(B) "Development" does not include the following:

(i) Construction of a single-family residence that is not part of a larger development;

(ii) Repair or maintenance of roads and highways within existing rights-of-way;

(iii) Routine maintenance dredging of existing streams, channels, and drainage ways;

(iv) The 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;



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

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

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

(viii) The use of any land for the purpose of cultivating, planting, growing, and harvesting of 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 subject to review by the authority in accordance with paragraph (C);

(ix) The transfer of title to land;

(x) The creation or termination of easements, covenants, or other rights in structures or land; [and]

(xi) The subdivision of land into lots greater than twenty acres in size[.];

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

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

(xiv) Structural and nonstructural improvements to existing single-family residences including additional dwelling unit, where otherwise permissible; and

(xv) Nonstructural improvements to existing commercial structures.

(C) Whenever the authority finds that any use, activity, or operation excluded in paragraph (B) is or may become part of a larger project; the cumulative impact of which may have a significant environmental or ecological effect on the special management area, that use, activity, or operation shall be defined as "development" for the purpose of this part.

[(7)] "Director" means the director of the department of land utilization, City and County of Honolulu[.], or authorized subordinate.

[(8)] "EIS" means an informational document prepared in compliance with the Environmental Quality Commission's Rules and Regulations implementing chapter 343, Hawaii Revised Statutes.

[(9)] "Emergency permit" means special management area emergency permit as defined in section 205A-22(5), Hawaii Revised Statutes.

[(10)] "Minor permit" means special management area minor permit as defined in section 205A-22(6), Hawaii Revised Statutes.

"Person" means any individual, organization, partnership, firm, association, trust, estate, public or private corporation, the State or any of its political subdivisions, or any other legal entity.

[(11)] "Shoreline" means the upper reaches of the wash of the waves, other than storm and tidal waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edges of vegetation

growth or the upper limit of debris left by the wash of the waves[, or as delineated on a shoreline survey which has been certified in accordance with the City and County Shoreline Setback Rules and Regulations].

[(12)] "Shoreline management permit" shall also mean special management area use permit.

[(13)] "Shoreline survey" means [that survey required under the Shoreline Setback Rules and Regulations of the City and County of Honolulu adopted pursuant to section 205-32, Hawaii Revised Statutes.] a survey map showing the shoreline as determined by the State Board of Land and Natural Resources in accordance with section 205A-42, HRS, and the rules adopted pursuant thereto.

[(14)] "Special management area" means the land extending inland from the shoreline, as established in this ordinance and delineated on the maps established by the council and filed with the council and agency pursuant to section 205A-23, Hawaii Revised Statutes.

[(15)] "Special management area minor permit" means an action by the agency authorizing development, the valuation of which is not in excess of \$65,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

[(16)] "Special management area use permit" means an action by the authority authorizing development, the valuation of which exceeds \$65,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

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

[(18)] "Valuation" shall be determined by the agency 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 in paragraph (A) above, the fair market value of the development.

b. By amending Section 33-2.1 to read as follows:

Sec. 33-2.1. Adoption.

The special management area, as established by the council in this chapter and shown on the special management area maps, which maps are hereby adopted and made a part of this chapter and filed with the council on the effective date of this chapter, shall be the City and County's official special management area to be administered and enforced by the director under the provisions of this chapter.

c. By amending Section 33-3.2(2) by amending item (C) to read as follows:

(C) The development is consistent with the County General Plan, development plans, and zoning [and subdivision codes and other applicable ordinances]. Such a finding of consistency does not preclude concurrent processing where a development plan amendment or zone change may also be required.

d. By amending Section 33-5.1(4) to read as follows:

(4) [A \$100 filing and processing fee. Such filing fee shall be waived for public agency projects.] An application fee according to the following schedule. Application fees are not refundable and shall be waived for public agency projects.

<u>Type of Development</u>	<u>Fee</u>
(A) <u>Agriculture, aquaculture or outdoor recreation developments</u>	<u>\$200</u>
(B) <u>All other developments</u>	<u>\$200, plus an additional \$100 per acre or major fraction thereof, up to a maximum of \$2,000.</u>

(C) When a special management area application is submitted subsequent to the applicant's being cited for under-taking development without having obtained the necessary permit, the application fee set forth above shall be doubled.

e. By amending Section 33-8.1 to read as follows:

Sec. 33-8.1. Civil Fine.

Any person who violates any provision of this chapter shall, upon notice issued pursuant to section 33-9.1, be deemed to have committed a civil violation and shall be subject to a civil fine not to exceed \$10,000.

f. By amending Section 33-8.2 to read as follows:

Sec. 33-8.2. Additional Fines.

In addition to any other penalties, any person who performs any development in violation of this [part] chapter shall, upon notice issued pursuant to section 33-9.1, be deemed to have committed a civil violation and shall be subject to a civil fine not to exceed \$500 a day for each day in which such violation persists.

g. By amending Chapter 33 by adding a new Article 9 to read as follows:

Article 9. Enforcement.

Sec. 33-9.1. Issuance Of Notice Of Violation And Order.

If the director determines that any person is violating any provision of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto, the director may have the person served, by mail or delivery, with a notice of violation and order.

(1) Contents of the notice of violation. The notice shall include at least the following information:

(A) Date of the notice;

(B) The name and address of the person noticed;

(C) The section number of the ordinance which has been violated;

(D) The nature of the violation; and

(E) The location and time of the violation.

(2) Contents of the order.

(A) The order may require the person do any or all of the following:

(i) Cease and desist from the violation;

(ii) Correct the violation at the person's own expense before a date specified in the order;

(iii) Pay a civil fine not to exceed \$10,000 in the manner, at the place and before the date specified in the order;

(iv) Pay a civil fine not to exceed \$500 per day for each day in which the violation persists, in the manner and at the time and place specified in the order, if the person has performed any development in violation of this chapter; or

(v) Appear before the director at a time and place specified in the order and answer the charges specified in the notice of violation.

(B) The order shall advise the person of the finality of the order 20 days after the date of its mailing or delivery unless written request for a hearing is mailed or delivered to the director within said 20 days.

Sec. 33-9.2. Effect Of Order; Right To Hearing.

The provisions of the order issued by the director under section 33-9.1 shall become final 20 days after the date of the mailing or delivery of the order unless within those 20 days the person subject to the order

requests in writing a hearing before the director. The request for hearing shall be considered timely if the written request is delivered or mailed and postmark dated to the director within said 20 days.

Upon receipt of the written request for hearing, the director shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the director in accordance with the provisions of Chapter 91, Hawaii Revised Statutes. Following said hearing, the director may affirm, modify or rescind the order as in the opinion of the director may be appropriate.

Sec. 33-9.3. 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 sections 33-9.1 and 33-9.2. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such a request, the civil fine imposed and that the fine imposed has not been paid.

Sec. 33-9.4. Judicial Enforcement Of Chapter.

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 thereunder or any permit issued pursuant thereto, in addition to any other remedy provided for under this chapter.

Sec. 33-9.5. Nonexclusiveness Of Remedies.

The remedies provided in this chapter for enforcement of the provisions of this chapter, any rule adopted thereunder or any permit issued pursuant thereto shall be in addition to any other remedy as may be provided by law.

h. By renumbering existing Articles 9 and 10 to Articles 10 and 11, respectively, and by amending them to read as follows:

Article [9.] 10. Appeals.

Sec. [33-9.1.] 33-10.1. Appeal In Accordance With Statute.

[Appeals shall be in accordance with section 205A-6, Hawaii Revised Statutes.] If any person is aggrieved by the order issued by the director pursuant to sections 33-9.1 and 33-9.2, the person may appeal the order in the manner provided in Chapter 91, Hawaii Revised Statutes, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

Article [10.] 11. Severability.

Sec. [33-10.1.] 33-11.1. Invalid Provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of conditions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 2. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling or printing this Ordinance for inclusion in the Revised Ordinances of Honolulu, the Corporation Counsel need not include the brackets, the bracketed material or the underscoring.



SECTION 3. This Ordinance shall take effect upon its approval.

INTRODUCED BY:

*[Handwritten signature: Simon Mercedo Jr.]*  
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Councilmembers

DATE OF INTRODUCTION:

MARCH 18, 1987

Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

*[Handwritten signature: Jane H. Howell]*  
Deputy Corporation Counsel

APPROVED this 15<sup>th</sup> day of June, 1987.

*[Handwritten signature: Frank F. Fasi]*  
FRANK F. FASI, Mayor  
City and County of Honolulu

**APPENDIX E**

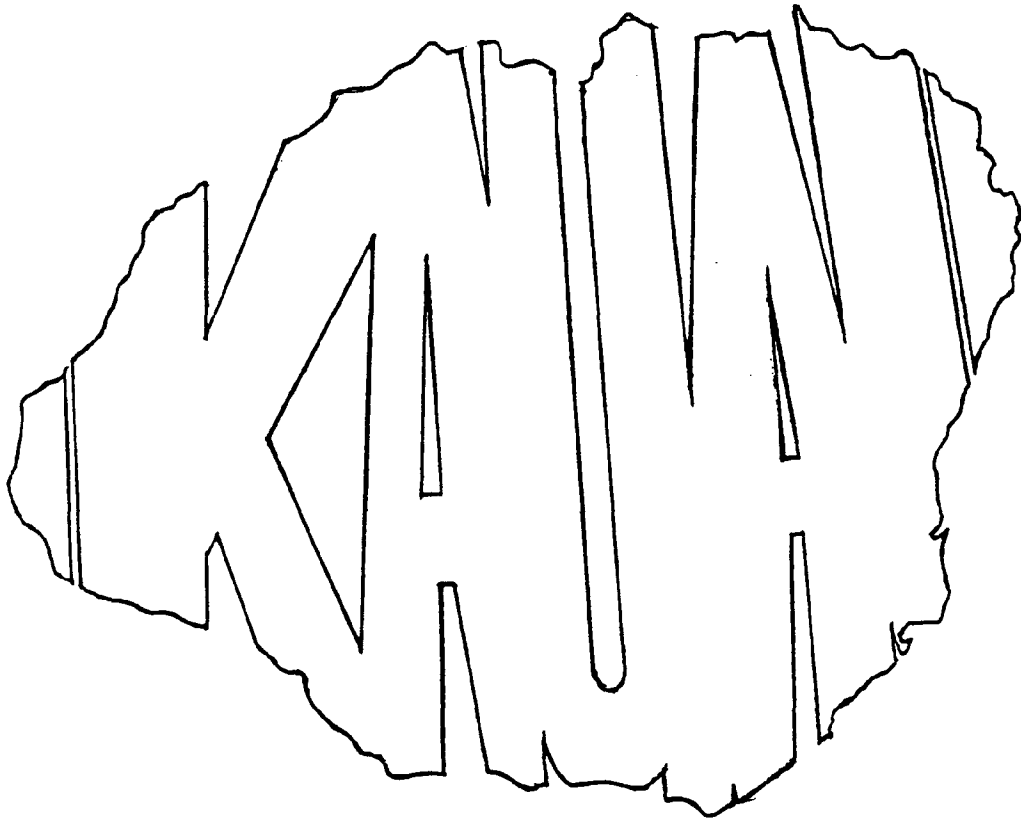
**SHORE DISTRICTS (S-SH)**

**CHAPTER 8, COMPREHENSIVE ZONING ORDINANCE**

**COUNTY OF KAUAI**

CHAPTER 8

COMPREHENSIVE  
ZONING  
ORDINANCE



KAUAI COUNTY CODE

1987

(D) Provisions for siltation and erosion control during construction and plans for revegetation of all cleared or graded areas not covered by impervious surfaces;

(E) Identification of flood hazards on the site, including the delineation of the floodways and base flood elevations.

(2) When required by the Department of Public Works, hydrologic and geologic reports showing the effects of the development on ground water recharge, storm water retention and marine water quality shall be submitted.

(3) When required by the Planning Director, an environmental impact study indicating critical areas of concern and the effects of the proposed development on physical, geologic, ecologic and environmental forms and systems such as downstream water quality, flood plains, wildlife, vegetation and marine ecologies, visual and historic amenities, and air or ground water pollution.

(b) The use, structure and development, if required, shall be subject to additional construction and development standards provided in Sec. 15-1, relating to Flood Plain Management.

(c) The applicant shall demonstrate to the satisfaction of the Planning Director, the Department of Public Works, and the Manager and Chief Engineer of the County Water Department that the proposed development will not have a detrimental effect on the ecology of the area and that the potential damage to public utility, traffic service systems, as a result of the development, has been substantially eliminated. (Ord. No. 164, August 17, 1972; Sec. 8-12.2, R.C.O. 1976; Ord. No. 416, October 28, 1981; Ord. No. 500, March 31, 1987)

#### Sec. 8-12.4 Modification Of Requirements.

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Flood District under the criteria established in Sec. 8-12.2. (Ord. No. 164, August 17, 1972; Sec. 8-12.4, R.C.O. 1976; Ord. No. 416, October 28, 1981)

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### ARTICLE 13. SHORE DISTRICTS (S-SH)

#### Sec. 8-13.1 Purpose.

To regulate development or alterations to shore and water areas which have unique physical and ecological conditions in order to protect and maintain physical, biologic and scenic resources of particular value to the

public. (Ord. No. 164, August 17, 1972; Sec. 8-13.1, R.C.O. 1976)

**Sec. 8-13.2 Lands Included.**

(a) The Shore District includes the greater of the following shoreline areas (land and water):

(1) That area where the Planning Director determines that there is significant interrelationship between the physical, biologic, or ecologic forms or systems characteristic of the shore area;

(2) From the low water mark to forty (40) feet inland from the upper reaches of the wash of waves other than storm or tidal waves (or twenty (20) feet in those cases as are provided for by the rules of the State Land Use Commission implementing Chapter 205, H.R.S.).

(b) Within five (5) years after the date of this Chapter the Planning Commission shall prepare a Shoreline Special Treatment Zone Plan. The plan upon adoption by the Planning Commission shall determine the boundaries of the Shore District. (Ord. No. 164, August 17, 1972; Sec. 8-13.2, R.C.O. 1976)

**Sec. 8-13.3 Requirements For Development Within The Shore District.**

No zoning, building or use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Shore District be permitted, unless the applicant establishes conformity with the requirements of this Article.

(a) Applicants for permits shall furnish an Information Report prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. The Planning Director shall determine the adequacy of the report and may require the submission of further information where necessary. The report shall provide information regarding the existing ocean conditions and regarding probable effects of the proposed structures, development, or alterations, as follows:

(1) With respect to existing conditions, the report shall describe the configuration of the shore; the nature, magnitude, and periodicity of Shore District forces such as wind, waves and currents, as they affect the Shore District; the origin, nature and volume of materials composing the shoreline; the physical and biologic characteristics and the rate of Shore District change over time under both natural and proposed artificial conditions.

(2) With respect to probable effects of the proposed construction, the applicant shall define a design wave (usually the mean height and period of the highest one-third (1/3) of the waves of a given wave

group, including storm surge and tsunami), the design water level of the ocean, the foundation conditions, and the construction materials, and shall state how the proposed design and construction operations will minimize disruption of the natural system.

(3) With respect to assessing the quality of the proposed construction, the applicant shall describe alternatives to the proposed construction that were considered and why each was rejected, in terms of environmental quality and economic feasibility, including as one alternative the choice of no construction.

(b) Before a permit may be granted, the applicant shall establish that the proposed alteration, construction or activity will not cause significant harm to:

(1) The water quality of the ocean, including but not limited to its clarity, temperature, color, taste and odor;

(2) Fish and aquatic habitats;

(3) The natural beauty of the area;

(4) Navigation, safety or health; or

(5) Would not substantially interfere with public use of the ocean waters or underlying lands; and

(6) That other facilities are unavailable to the applicant.

(c) Marinas and harbors shall not be permitted in the following locations:

(1) Areas where, due to the amount of unconsolidated materials, wave and current energy, shoreline configuration, and other pertinent factors, beach erosion is likely to occur.

(2) Unstable locations.

(3) Areas designated by the Planning Commission as being of unique scenic beauty which should be retained in their natural condition.

(4) Areas where there is no demonstrable public need for a new marina or harbor.

(5) In areas so that the standards established in Section 8-13.3(b) are violated.

(6) Use Districts where marinas and harbors are not permitted uses.

(d) Marinas and harbors, when permitted, shall be located in the following areas unless the Planning Commission determines that the site would be inconsistent with the objectives of this Chapter or the applicant can demonstrate that such an area is unavailable and that the alternative site chosen will be consistent with the purposes of this Chapter.

(1) In deeper water in order to minimize the need for dredging.

(2) In natural inlets to avoid use of breakwaters.

(3) In an area designated for marinas and harbors on the General Plan.

(e) Design and Construction Standards:

(1) Floating piers or piers on pilings shall be used to provide access to boats, rather than dredging, whenever possible.

(2) Where dredging is permitted, spoil material shall not be deposited in the water.

(3) Where a barrier wall is required in connection with a marina, or harbor, it shall be carried deep enough below the bottom to prevent movement of back-fill materials into the water.

(4) Materials used to stabilize the bottom of the marina or harbor for pier structures shall be chemically inert sand, gravel, or similar substances.

(f) Shore Facilities. Restrooms, pump-out facilities for boat sewage receptacles, and trash receptacles for other boat wastes shall be provided at a marina or harbor.

(g) Monitoring Information Requirements. The owner or operator of a marina or harbor may be required to furnish information concerning water quality, current patterns and intensities, shore alterations, and any other conditions which may be altered by the construction of the marina or harbor for a reasonable period after completion of the facility.

(h) Location of Shoreline Protective Structures. To prevent local beach loss, shoreline protective structures shall be used only where protection of the back-shore is of greater importance than beach preservation, or where less disruptive methods have failed. The following design and construction standards shall apply:

(1) Sloping permeable revetments shall be used when barriers are permitted.

(2) Seawalls and bulkheads shall be permitted only when the applicant is able to demonstrate that revetments are not feasible and that the alternative structure will cause no undue beach erosion.

(3) Shoreline barriers shall not be constructed of unstable or soluble materials.

(i) There shall be no fill placed in the Shore District except at those locations where the fill is found to be beneficial to existing water quality or Shore District conditions.

(j) There shall be no dredging, removal or rearrangement of materials within the water or shore zone of the ocean. Dredging or excavation performed in the course of construction for which a permit has been approved under the terms of this Chapter shall be considered dredging or excavation for the purpose of this Article. (Ord. No. 164, August 17, 1972; Sec. 8-13.3, R.C.O. 1976)

**Sec. 8-13.4 Permits Required.**

(a) A Class IV Zoning Permit is required for any construction, development, use or activity proposed to be carried out within forty (40) feet of the upper reaches of the wash of waves other than storm or tidal waves, or within the shoreline setback area as established by the State Land Use Commission pursuant to Chapter 205, H.R.S., whichever is the lesser. The Planning Commission shall issue a permit only if the requirements of both Chapter 205, H.R.S. and this Chapter have been met.

(b) A Class III or Class IV Zoning Permit, depending upon the requirements established for the underlying Use District in which the proposed construction, development, use or activity is located, is required for undertakings in the Shore District established by this Chapter located landward of the shoreline setback area defined in Section 8-13.4(a). The Planning Director or Planning Commission shall issue a permit only if the requirements of this Chapter have been met. (Ord. No. 164, August 17, 1972; Sec. 8-13.4, R.C.O. 1976)

**Sec. 8-13.5 Modification Of Requirements.**

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Planning Director that the area in question should not have been included in the Shore District under the criteria established in Section 8-13.2. (Ord. No. 164, August 17, 1972; Sec. 8-13.5, R.C.O. 1976)

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**ARTICLE 14. SLOPE DISTRICTS (S-SL)**

**Sec. 8-14.1 Purpose.**

(a) To insure public safety from earth slides and slips.

(b) To minimize erosion and attendant siltation of downstream waters.

(c) To insure safety from downstream flooding due to altered runoff characteristics.

(d) To protect ecologic functions such as ground water recharge, wildlife habitats, and vegetative communities. (Ord. No. 164, August 17, 1972; Sec. 8-14.1, R.C.O. 1976)

**Sec. 8-14.2 Lands Included.**

All land areas in excess of twenty percent (20%) slope (one (1) foot of rise or fall in five (5) feet measured horizontally). (Ord. No. 164, August 17, 1972; Sec. 8-14.2, R.C.O. 1976)



**APPENDIX F**

**SHORELINE SETBACK RULES & REGULATIONS**

**COUNTY OF KAUAI**

SHORELINE SETBACK RULES AND REGULATIONS  
PLANNING DEPARTMENT  
COUNTY OF KAUAI

Section 1. Authority.

Pursuant to authority conferred by Chapter 205, Hawaii Revised Statutes, as amended, by Section 2, Act 136, Session Laws of Hawaii 1970, the rules and regulations hereinafter contained are hereby established and shall apply to all lands along the shoreline within the County of Kauai, State of Hawaii.

Section 2. Purpose.

Growing population and expanding development have brought about numerous cases of encroachment of structures upon the shoreline. Many of these structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks.

Section 3. Title.

These rules and regulations shall be known as the "SHORELINE SETBACK RULES AND REGULATIONS OF THE COUNTY OF KAUAI."

Section 4. Definitions.

For the purpose of these rules and regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

- a. "Agency" means the Planning Department of the County of Kauai.
- b. "Commission" shall mean the Land Use Commission of the State of Hawaii.
- c. "Director" shall mean the Planning Director of the Planning Department, County of Kauai.

- d. "Land" shall include areas under water within the boundaries of the State.
- e. "Line of debris" shall mean a line marking the landward limit of debris deposits resulting from wave uprush.
- f. "Nonconforming structure" shall mean any structure which was previously lawful and existing within the shoreline setback area prior to the effective date of Act 136, SLH 1970, or any subsequent amendments made thereto.
- g. "Nonconforming use" shall mean the use of a building or structure, or of a parcel of land, lawfully existing within the shoreline setback area prior to the effective date of Act 136, SLH 1970, or any subsequent amendments made thereto.
- h. "Owner" shall include lessees of real property.
- i. "Plan" shall mean a detailed construction drawing prepared to an appropriate scale, showing the design of the proposed construction. The plan shall be based upon an accurate instrument survey and shall include data on the existing conditions, including property boundaries and topography, in and around the proposed construction.
- j. "Planning Commission" shall mean the Planning Commission of the County of Kauai.
- k. "Revetment" shall mean a facing of stone, concrete, blocks, or other similar material built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.
- l. "Shoreline" shall mean the upper reaches of the wash of waves, other than storm and tidal waves, usually evidenced by the edge of vegetative growth, the upper line of debris left by the wash of waves, established and structurally sound shoreline walls or structures or other visible marks such as the rocky shore, as most applicable in each case, which indicates the farthest extent to which the maximum annual wave advances inland. A shoreline shall not be established along berms, causeways, revetments, etc., which enclose fish ponds, marinas, pools, tidal basins, and similar facilities.
- m. "Shoreline setback" shall mean all of the land area between the shoreline and the shoreline setback line.

- n. "Shoreline setback line" shall mean that line established by the State Land Use Commission or the County of Kauai running inland from and parallel to the shoreline at a horizontal plane.
- o. "Structure" shall mean anything constructed or erected with a fixed location on the ground, or requiring a fixed location on the ground, or attached to something having or requiring a fixed location on the ground.
- p. "Use." A use is:
  - (1) any purpose for which a structure or a tract of land is designed, arranged, intended, maintained, or occupied; or
  - (2) any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.
- q. "Vegetative growth" shall mean any plant, tree, shrub, grass, or groups, clusters or patches of the same, rooted and growing.

Section 5. Shoreline Setback Lines.

Shoreline setback lines are established throughout the County of Kauai at 40 feet inland from the upper reaches of the wash of waves other than storm and tidal waves, except that such shoreline setback lines shall be 20 feet inland on any land parcel of record when any one or more of the following exist:

- a. Where the average depth of the parcel, as measured from the shoreline or the seaward boundary of the parcel, whichever is the lesser, is less than 100 feet. The average depth of the parcel shall be determined by standard geometrics of a rectilinear lot or by a combination of a series of rectilinear divisions of the total lot. The Director's finding relating to determination of the average depth shall be final.
- b. Where the parcel is less than one-half ( $\frac{1}{2}$ ) acre and where that parcel area is less than the minimum lot area required by the respective County zoning or subdivision ordinance applicable to said parcel.
- c. Where the buildable area of the parcel is reduced to less than 50 percent of the parcel area after applying the 40 foot shoreline setback line and all State and County requirements wherein the parcel is located including

but not limited to front and side yard setbacks, cross-slope requirements, and terrain requirements.

Shoreline setbacks established at distance greater than that established by the Commission shall be administered and enforced under such county setback ordinances in conjunction with these rules and regulations.

Section 6. Establishment of the Shoreline.

The actual field location of the shoreline in accordance with the definitions herein along with existing property lines shall be located and platted by instrument surveys and the property corners or other appropriate reference mark be identified on the ground on the boundary fronting the sea by a land surveyor registered in accordance with Chapter 464, Hawaii Revised Statutes. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming statement and signature of the Chairman of the Board of Land and Natural Resources, State of Hawaii. The Chairman's signature shall be placed over the following confirming statement:

"The shoreline as located and certified is hereby confirmed as being the actual shoreline as of       (date)      ." Shoreline setbacks shall be measured inland from the shoreline as determined and certified by the Registered Land Surveyor and as confirmed by the Chairman of the Board of Land and Natural Resources.

Maps showing the location of a shoreline shall be based upon actual field surveys conducted by a registered land surveyor within six months prior to filing of an application for any construction or use relative to lands adjacent to and inland of the shoreline under these rules and regulations. Where an application for governmental action is withdrawn or held in abeyance at the request of the applicant or held in abeyance due to noncompliance with other provisions of these rules and regulations in order to complete the application, or if a decision is not rendered for just and due cause by the Agency through its Director, the shoreline survey data shall be null and void after a period of one year from the date of the original field survey. The applicant shall provide a map based on an updated survey and processing can proceed by the Agency only thereafter.

Section 7. Activities Subject to These Rules and Regulations.

All proposed public and private construction or subdivision involving lands within the shoreline setback and all applications thereof for permits, reviews, approvals, and any other similar procedures for governmental review shall be subject to these rules and regulations. Such construction shall include but not be limited to work involved for repairs, remodeling, reconstruction, replacement, or maintenance. Approval based upon compliance with these rules and regulations shall not relieve the applicant of the responsibility of compliance with all other applicable statutes, codes, ordinances, or rules and regulations.

Section 8. Authority to Waive Field Surveys.

Whenever in the opinion of the Director, the proposed construction as indicated by data submitted by the applicant is clearly and unmistakably located on shoreline properties at a considerable distance from the shoreline setback, he shall be vested with the authority to waive the requirement for instrument surveys by a registered land surveyor for the establishment of the shoreline and the confirmation by the Chairman of the Board of Land and Natural Resources. In granting such a waiver, he may require certification from the applicant that none of the proposed construction is intended for or will be constructed within the shoreline setback. Such certifications, if required, shall bear the sign and seal of notary public commissioned under the laws of the State of Hawaii.

Section 9. Authority of the Agency Along Shorelines.

All construction, improvements, grading, and such related activities within or immediately inland of the shoreline setback shall be subject to review and approval of the Agency under these rules and regulations. Such activity proposed for lands seaward of the shoreline shall not come under the jurisdiction of these rules and regulations. Where the jurisdiction of the Agency is limited for lands within the shoreline setback and with adjacent inland lands under the jurisdiction of other agencies, review by other agencies as well as this Agency shall be required.

Section 10. Prohibited Activities and Facilities within the Shoreline Setback.

- a. The removal of sand, coral, rocks, soil, shells, or other beach compositions or natural plants and materials along the shorelines within the shoreline setback shall be prohibited. Such removal shall be prohibited for any purpose except for reasonably domestic, noncommercial use which shall not involve construction, repairs, reconstruction, grading, or filling.

Removal for reasonably domestic, noncommercial use shall not be made in any manner or to an extent that will change the basic topography or the physical appearance and configuration of the area.

- b. No structure or any portion thereof, including seawalls, groins, revetments, and other similar structures, whether built above, on, or below the ground surface, shall be permitted within the shoreline setback. Construction of facilities that are accessory or incidental to structures located in areas immediately adjacent to the shoreline setback shall not be permitted.

Roads, streets, driveways, walkways, utility lines (whether overhead, surface, or underground), grading and filling work, and any and all other construction work not necessarily related to structures shall not be permitted within the shoreline setback.

- c. Any sand mining operation or portion thereof within the shoreline setback which has been legally in operation for a period of at least two years immediately prior to June 22, 1970, may be continued for a period not to extend beyond July 1, 1975. Continued operation during this period shall be contingent upon maintaining the scope of operations of June 22, 1970. Mining operations within the shoreline setback that have substantially increased in scope from that of June 22, 1970, shall be unlawful and all operations within the shoreline setback shall be immediately and permanently discontinued.

Section 11. Facilities Permitted within the Shoreline Setback.

- a. Special structures necessary for safety reasons or to protect property from erosion or wave damages shall be permitted upon compliance with all applicable

laws, ordinances, codes, and regulations and upon approval by the Director. The Director shall not approve the construction of such structures within the shoreline setback without the concurrence of the County Engineer of the Department of Public Works, County of Kauai.

All such applications for approval by the Director shall be accompanied by preliminary construction plans as well as a certification report from a Marine Engineer or Ocean Engineer indicating that: (1) the structure is needed for safety reasons or to protect the property from erosion or wave damages, (2) the proposed construction is the best alternative of several investigated, and (3) the proposed construction will not cause any adverse effect or significant changes to the shoreline. Upon approval of the preliminary construction plans, the applicant may proceed with final construction plans and documents for review and approval in accordance with applicable laws, ordinances, codes, and regulations.

- b. Any lawful nonconforming structure existing within the shoreline setback on June 22, 1970, shall be permitted. A structure not conforming to this Section but for which a building permit application or an appropriate permit application has been filed on or before June 22, 1970, shall also be permitted as a nonconforming structure subject to the ordinances and regulations of the County of Kauai.

Any nonconforming structure, driveway, roadway, or utility may be replaced, removed, or reconstructed upon compliance with applicable State and County requirements within the shoreline setback, provided that no such nonconforming structure or facility shall be substantially enlarged or changed to another nonconforming use. If the use of any nonconforming structures is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited.

- c. No nonconforming use of land shall be enlarged or increased or extended to occupy a greater area of land than was occupied on June 22, 1970. No nonconforming use of land shall be moved in whole or in part to any portion of the lot within the shoreline setback.



d. Upon the submittal of plans, data, and certification reports by the applicant, and a public hearing conducted by the Agency, the construction of tunnels, canals, basins, and ditches, together with associated structures used by public utilities, wharves, docks, piers, and other harbor and waterfront improvements and any other maritime facility and water sport recreational facilities may be permitted within the shoreline setback. The Agency may approve of such plans for such construction only upon the finding that the proposed structures will result in a minimum interference with natural shoreline processes.

Construction of facilities by a governmental body as indicated in the paragraph immediately preceding, shall be exempt from the provisions of this part. The governmental body charged with the construction shall hold two public hearings as follows:

- (1) When the project is first conceived, and
- (2) When the project is substantially designed and planned, but prior to the letting of the construction contract.

Facilities indicated in Section 11(d), constructed on State land by the State shall be submitted for review and information of the Director. The Director shall make a finding as to whether or not the proposed construction as indicated on the plans is in conflict with any ordinances, zoning laws, and building code of the County of Kauai. The State shall not proceed with such construction without the certification by the Director that there are no conflicts.

**Section 12. Administration of These Rules and Regulations.**

a. The Agency, through its Director, shall review and approve or disapprove all plans submitted in accordance with the requirements of Sections 6, 7, and 11. The Director may require additional plans or data in addition to those specified in these Sections. Changes in any plans or data submitted in order to obtain optimum compliance practicable to these rules and regulations and that are reasonable and necessary may be required by the Director.

b. The Agency, through its Director, shall receive and review plans for proposed structures, facilities, or activities that are prohibited within the shoreline setback upon the submission of adequate plans and data attached to a properly executed application form requesting a variance through the Planning Commission of the County of Kauai. The application shall be accompanied by a fee of one hundred dollars (\$100.00) to cover the cost of publishing hearing notices. Certification by the owner or lessee of the property authorizing and condoning the application for a variance from these rules and regulations shall also be provided by the applicant or agent.

Applications for a variance from these rules and regulations shall be accompanied by accurate written statements to substantiate that:

- (1) such structure, activity, or facility is in the public interest, or
- (2) hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed on that portion of the land within the shoreline setback.

Upon receipt of a complete application, the Director shall solicit comments from other governmental agencies and submit his recommendations in writing to the Planning Commission along with copies of the application.

Section 13. Action by Planning Commission.

Upon receipt of the application and the Director's recommendation, the Planning Commission shall decide on the matter according to the rules and regulations of the Planning Commission as it pertains to granting variances from the Zoning Ordinance.

Section 14. Enforcement.

The Director shall enforce the shoreline setbacks and these rules and regulations.

Section 15. Penalties.

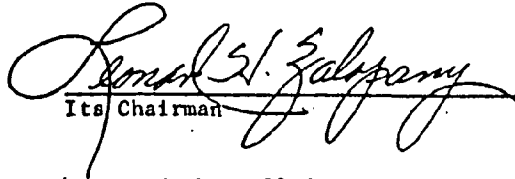
Any person who violates any provision for shoreline setbacks of these rules and regulations shall be fined not more than \$500.00. The continuance of any such violation shall be deemed a new offense for each day of such continuance.

Section 16. Validity.

If any section or part of these rules and regulations is held to be invalid for any reason whatsoever, such invalidity shall not affect the validity of the remaining sections or part of these rules and regulations.

ADOPTED on the 22nd day of June, 1971, by the PLANNING COMMISSION OF THE COUNTY OF KAUAI.

PLANNING COMMISSION OF THE  
COUNTY OF KAUAI

  
Its Chairman

APPROVED AS TO FORM:

Approved this 22nd day of June

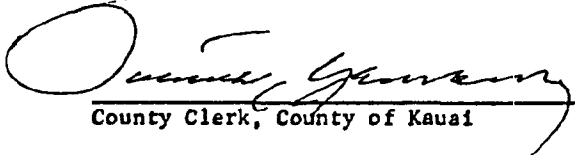
A.D. 1971.

  
County Attorney, County of Kauai

  
Mayor, County of Kauai

Received this 22nd day of June

A.D. 1971.

  
County Clerk, County of Kauai

**APPENDIX G**

**SHORELINE MANAGEMENT AREA (SMA)**

**RULES & REGULATIONS**

**COUNTY OF KAUAI**

SPECIAL MANAGEMENT AREA

RULES AND REGULATIONS

OF THE COUNTY OF KAUAI

(As Amended)

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SPECIAL MANAGEMENT AREA RULES AND REGULATIONS  
OF THE COUNTY OF KAUAI

Section 1.0 General Provisions

1.1 Authority

Pursuant to authority conferred by Chapter 205A, Hawaii Revised Statutes, as amended by Acts 176, 188, 200, and 126, Session Laws of Hawaii 1975, 1977, 1979, and 1982, respectively, the rules and regulations hereinafter contained are hereby established and shall apply to all lands within the special management area of the County of Kauai.

1.2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

1.3 Title

These Rules and Regulations shall be known as the "Special Management Area Rules and Regulations of the County of Kauai."

1.4 Definitions

For the purpose of these Rules and Regulations, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

(These definitions are intended to clarify, not to replace nor to negate the definitions in Chapter 205A, HRS, as amended.)

- A. "Agency" means the Planning Department of the County of Kauai.
- B. "Applicant" includes any individual, partnership, firm, association, trust, estates, private corporation, or other legal entity, including any utility, and any department, commission, board, etc., of government.
- C. "Authority" means the Planning Commission of the County of Kauai.

- D. "County Engineer" means the head of the Department of Public Works of the County of Kauai.
- E. "County" means the County of Kauai.
- F. "Crops" means agricultural produce or part(s) of plants or trees cultivated for commercial or personal use including, but not limited to, the raising of livestock.
- G. "Debris Line" means a line marking the landward limit of debris deposits, resulting from wave uprush.
- H. "Development" means any of the uses, activities, or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (2):
  - (1) "Development" includes the following:
    - (a) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
    - (b) Grading, removing, dredging, mining, or extraction of any materials;
    - (c) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
    - (d) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
    - (e) Construction, reconstruction, demolition, or alteration of the size of any structure.
  - (2) "Development" does not include the following:
    - (a) Construction of a single-family residence that is not part of a larger development;
    - (b) Repair or maintenance of roads and highways within existing rights-of-ways;
    - (c) Routine maintenance dredging of existing streams, channels, and drainage ways;
    - (d) The 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;

- (e) Zoning variances, except for height, density, parking, and shoreline setback;
- (f) Repair, maintenance, or interior alterations to existing structures;
- (g) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (h) The use of any land for the purpose of cultivating, planting, growing, and harvesting of plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture;
- (i) The transfer of title to land;
- (j) The creation or termination of easements, covenants, or other rights in structures or land;
- (k) The subdivision of land into lots greater than twenty acres in size; and
- (l) The amendment of the County general plan, development plans, State land use district boundaries, and zoning changes.

(3) Whenever the authority finds that any use, activity, or operation excluded in paragraph (2) is or may become part of a larger project, the cumulative impact of which may have a significant environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as "development" for the purpose of these rules and regulations.

- I. "Director" means the Planning Director or his authorized designee of the Planning Department, County of Kauai.
- J. "EIS" means an informational document prepared in compliance with Chapter 343, HRS, and the Environmental Quality Commission's Rules and Regulations, and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic and social welfare of the community and State, effects

of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.

- K. "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.
- L. "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.
- M. "Owner" shall mean all equitable and legal holders or lessees of real property. Lessees shall present certification of approval from the legal owner.
- N. "Person" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity including any utility, and any department, commission, board, etc., of government.
- O. "Shoreline" means the upper reaches of the wash of the waves, other than storm and tidal waves, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.
- P. "Shoreline Survey" shall mean the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a land surveyor registered in the State of Hawaii. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chairman of the Board of Land and Natural Resources.
- Q. "Single-Family Residence" means a detached building designed for and/or used as the complete facility for the cooking, sleeping and living area of a single family only and occupied by no more than one family, including uses normally considered accessory to the single family facilities provided that such uses are in compliance with all requirements of any County or State

regulations, statute or ordinance. A single family shall include all persons living in a dwelling related by blood, marriage or adoption or a group comprised of not more than five persons not related by blood, marriage or by adoption. For the purposes of these Rules and Regulations, a guest house shall not be considered an accessory use.

- R. "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, HRS, and Section 18.0 of these Rules and Regulations.
- S. "Special Management Area Emergency Permit" means an action by the Director, pursuant to authority provided him by the Authority and defined in these Rules and Regulations, authorizing development in cases of emergency requiring immediate action to prevent substantial physical harm to persons or property.
- T. "Special Management Area Minor Permit" means an action by the Director, pursuant to authority provided him by the Authority and defined in these Rules and Regulations, authorizing development, the valuation of which is not in excess of \$65,000 and which has no significant adverse environmental or ecological effect, taking into account potential cumulative effects.
- U. "Special Management Area Use Permit" means an action by the Authority authorizing development, valuation of which exceeds \$65,000 or which may have a significant adverse environmental or ecological effect, taking into account potential cumulative effects.
- V. "Structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.
- W. "Use." A use is:
  - (1) Any purpose for which a structure or a tract of land is designed, arranged, intended, maintained, or occupied.
  - (2) Any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.

- X. "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 in paragraph H. (1) above, the fair market value of the development.
- Y. "Vegetation line" means a line marking the seaward limit of natural terrestrial growth.
- Z. "Vegetation growth" means any plant, tree, shrub, grass, or groups, clusters or patches of the same naturally rooted and growing.

Section 2.0 Special Management Area

Special Management Areas as delineated on the maps filed with the Authority and the office of the County Clerk as of June 8, 1977 or as amended pursuant to Section 205A-23, HRS, and Section 18.0 of these Rules and Regulations shall be the official special management areas to be administered and enforced under these Rules and Regulations.

Section 3.0 Objectives and Policies of the Hawaii Coastal Zone Management Act

The following are the objectives and policies of the State's Coastal Zone Management Act, as enumerated in Chapter 205A of the Hawaii Revised Statutes.

A. Objectives

- (1) Provide coastal recreational opportunities accessible to the public;
- (2) Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture;
- (3) Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources;
- (4) Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems;
- (5) Provide public or private facilities and improvements important to the State's economy in suitable locations;

- (6) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence; and
- (7) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

B. Policies

(1) Recreation Resources:

- (a) Improve coordination and funding of coastal recreation planning and management; and
- (b) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
  - (i) Protecting coastal resources uniquely suited for recreation activities that cannot be provided in other areas;
  - (ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;
  - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
  - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
  - (v) Encouraging expanded public recreational use of County, State, and federally owned or controlled shoreline lands and waters having recreational value;

- (vi) Adopting water quality standards and regulating point and non-point sources of pollution to protect and where feasible restore the recreational value of coastal waters;
  - (vii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits, and crediting such dedication against the requirements of Section 46-6, HRS.
- (2) Historic Resources:
- (a) Identify and analyze significant archaeological resources;
  - (b) Maximize information retention through preservation of remains and artifacts or salvage operations; and
  - (c) Support State goals for protection, restoration, interpretation and display of historic resources.
- (3) Scenic and Open Space Resources
- (a) Identify valued scenic resources in the coastal zone management area;
  - (b) Insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
  - (c) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
  - (d) Encourage those developments which are not coastal dependent to locate in inland areas.
- (4) Coastal Ecosystems:
- (a) Improve the technical basis for natural resource management;
  - (b) Preserve valuable coastal ecosystems of significant biological or economic importance;

- (c) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
- (d) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate State water quality standards.

(5) Economic Uses:

- (a) Concentrate in appropriate areas the location of coastal dependent development necessary to the State's economy;
- (b) Insure that coastal dependent development such as harbors and ports, visitor facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual and environmental impacts in the coastal zone management area; and
- (c) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
  - (i) Utilization of presently designated locations is not feasible;
  - (ii) Adverse environmental effects are minimized; and
  - (iii) Important to the State's economy;

(6) Coastal Hazards:

- (a) Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence hazard;
- (b) Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard;

- (c) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
  - (d) Prevent coastal flooding from inland projects.
- (7) Managing Development:
- (a) Effectively utilize and implement existing law to the maximum extent possible in managing present and future coastal zone development;
  - (b) Facilitate timely processing of application for development permits and resolve overlapping of conflicting permit requirements; and
  - (c) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the general public to facilitate public participation in the planning and review process.

Section 4.0 Special Management Area Guidelines

The following guidelines shall be used by the Authority for the review of developments proposed in the special management area:

- A. All development in the special management area shall be subject to reasonable terms and conditions set by the Authority to insure that:
  - (1) 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;
  - (2) Adequate and properly located public recreation areas and wildlife preserves are reserved;
  - (3) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources; and
  - (4) Alterations to existing land forms and vegetation except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum



danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

- B. No development shall be approved unless the Authority has first found that:
- (1) 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, and welfare, or compelling public interest. Such adverse effect 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;
  - (2) The development is consistent with the objectives and policies, as enumerated in Chapter 205A, HRS, and as recited herein under Section 3.0, above; and special management area guidelines set forth in these Rules and Regulations.
  - (3) The development is consistent with the County general plan, zoning, subdivision, and other applicable ordinances.
- C. The Authority shall seek to minimize, where reasonable:
- (1) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.
  - (2) Any development which would reduce the size of any beach or other area usable for public recreation.
  - (3) 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 area and the mean high tide line where there is no beach.
  - (4) Any development which would substantially interfere with or detract from the line of sight toward the sea from the State Highway nearest the coast, or from existing public views to and along the shoreline.
  - (5) Any development which would adversely affect water quality, existing areas of open water free of visible structure, existing and potential

fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

Section 5.0 Developments Proposed Within the Special Management Area Subject to Review

Any use, activity, or operation proposed within the special management area, as defined as a "development" pursuant to Section 1.4 H, above, shall be subject to the review of the Agency and the Authority under these Rules and Regulations. Such review shall be pursuant to the objectives, policies and guidelines set forth in Sections 1.2, 3.0, and 4.0.

Section 6.0 Consultation

Any person contemplating development within the special management area may contact the Agency for procedures and general information that may have a direct influence on his proposed development.

Any person who determines on his own that his proposed development is in excess of \$65,000 or will have a significant adverse effect on the special management area may apply pursuant to Section 8.0 and waive the Assessment Procedures in Section 7.0. Otherwise, he shall be subject to assessment.

Section 7.0 Assessment Procedures

7.1 Filing

Any person proposing a use, activity, or operation required to be subject to assessment shall be responsible for filing the following with the Agency:

- A. A tax map key description of the property on which the applicant proposes his project.
- B. A plot plan of the property, drawn to scale with all proposed structures shown thereon and any other information necessary to a property determination relative to the specific request.
- C. A written description of the proposed project and a statement of objectives.
- D. A statement of the valuation.
- E. An EIS if required under Chapter 343, HRS or when required by the Planning Agency.

- F. If required by the agency, a written description of the affected environment and a written statement evaluating the proposed development in relation to the objectives and policies of the State's Coastal Zone Management Act and the guidelines of the Special Management Area as provided herein.
- G. A shoreline survey when the parcel abuts the shoreline and when required by the Planning Agency.
- H. Any other relevant plans or information required by the Agency.

#### 7.2 Assessment

The Director shall assess the proposal upon the person's compliance with Section 7.1, based on the following criteria:

- A. The valuation of the proposal.
- B. The potential effects and the significance of each according to the Significant Adverse Effect Criteria established by Section 7.4.
- C. The nature of the development.

#### 7.3 Determination

The Director within thirty (30) calendar days after the receipt of all filing requirements or within a longer period as agreed to by the person, shall consider the proposal together with all accompanying data and shall issue a determination subject to considerations or alterations. The Director shall notify the person of his determination.

- A. Where the Director finds that the proposal:
  - (1) is not a development, as defined in Section 1.4 H;  
or
  - (2) is exempt by Section 12.0;he shall determine that the proposal is exempt from these Rules and Regulations.
- B. Where the Director finds that the proposal:
  - (1) is a development, as defined in Section 1.4 H; and
  - (2) is not in excess of \$65,000; and
  - (3) will not have a significant adverse effect on the special management area;

he shall issue a minor permit and may impose any reasonable terms and conditions deemed necessary to meet the objectives and policies enumerated in Section 3.0, and the guidelines, provided in Section 4.0.

C. Where the Director finds that the proposal:

- (1) is a development, as defined in Section 1.4 H; and
- (2) is in excess of \$65,000; or
- (3) may have a significant adverse effect on the special management area;

he shall inform the person of the following:

- (a) the requirement of an application pursuant to Section 8.0; and
- (b) the public hearing requirements, pursuant to Section 9.0; and
- (c) The Authority's requirements for action, pursuant to Section 10.0; and
- (d) The area of critical concern to delineate the scope of information which the applicant must address.

D. The Director shall file a quarterly report of his determinations in writing to the Authority.

#### 7.4 Significant Adverse Effect Criteria

In considering the significance of potential environmental effects, the Agency and Applicant shall consider the sum of those effects that adversely affect the quality of the environment, and shall evaluate the overall and cumulative adverse effects of the proposal.

A "significant adverse effect" may vary with the individual setting and circumstances of particular proposals. Generally, however, any proposal which may have a major adverse effect on the quality of the environment or adversely affect the economic or social welfare of an area, or would possibly be contrary to the objectives, policies and guidelines of these Rules and Regulations, the County's General Plan, Development Plans, zoning and subdivision ordinances, policies and purposes, and to the State Plan, would likely result in a "significant adverse effect."

In determining whether a proposal may have a significant adverse effect on the environment, the Agency shall consider every phase of a proposal and expected consequences, either primary or secondary, or the cumulative as well as the short or long-term effect of the proposal. The Agency should bear in mind that in most instances, the following factors of a proposal, although not limited to same, may constitute a significant adverse effect on the environment when the proposal:

- A. involves an irrevocable commitment to loss or destruction of any natural or cultural resources, including but not limited to, historic sites, Special Treatment Districts as established in the County Comprehensive Zoning Ordinance, viewplanes or scenic corridors as outlined in the Development Plans, and recreation areas and resources;
- B. curtails the range of beneficial uses of the environment;
- C. conflicts with the County's or the State's long-term environmental policies or goals;
- D. substantially affects the economic or social welfare and activities of the community, County or State;
- E. involves substantial secondary impacts, such as population changes and effects on public facilities;
- F. in itself has no significant adverse effect but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
- G. substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- H. detrimentally affects air or water quality or ambient noise levels; or
- I. Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water.

#### Section 8.0 Application Procedure

Any person who has received a determination under Section 7.3 that his proposal is neither exempt, nor that it conforms to the requirements for a minor permit, or any person who has determined on his own that his proposal is in excess of \$65,000 or will have a significant adverse effect, shall apply for a special management area use permit.

The applicant shall be responsible for submitting a completed form provided by the Agency. Such form shall be accompanied by:

- A. In the case of applicants whose proposals have not been assessed, all informational requirements of Section 7.1.
- B. In the case of applicants whose proposals have been assessed, any information as to the areas of critical concern delineated by the Director.
- C. A \$150 filing and processing fee; provided, however, that if applications for other permits which require public hearings to be conducted by the Authority are filed for the same development, and if public hearings for the permit applications are to be held simultaneously, only one filing fee of \$150 will be required.

Upon compliance with the foregoing procedures, the Director shall notify the applicant by mail that this application has been accepted.

#### Section 9.0 Public Hearings

A public hearing shall be set no less than twenty-one (21) nor more than sixty (60) calendar days after the date on which the application is accepted, unless the sixty-day (60) period is waived by the applicant. Immediately upon the Authority's fixing a day for the public hearing, the applicant shall mail a notice setting forth the time and place of the hearing to not less than two-thirds of the persons being the owners or lessees holding under recorded leases, of real estate situated within a distance of three hundred feet from the nearest point of the premises involved in the application to the nearest point of such real estate, and to persons who have requested in writing to be notified of special management area use permit hearings, not less than fifteen (15) days prior to the date set for the hearing; and before the hearing the applicant shall file with the Commission an affidavit as to such mailing of notice. Notice by mail may be addressed to the last known address of the person concerned. In addition, for each condominium project within the affected area, one notice of the hearing shall be sent by mail addressed "To the Residents, Care of the Manager," followed by the name and address of the condominium involved. The Agency shall give written notice once in a newspaper of general circulation in the State, at least twenty (20) calendar days prior to the public hearing. The notice shall state the nature of the proposed development for which a permit application is made and of the time and place of the public hearing.

Any such hearing shall, whenever possible, be held jointly and concurrently with an environmental impact statement hearing, if such hearing is held under Chapter 343, HRS, and with any zoning, use and variance permits as may be required under the provisions of the County Comprehensive Zoning Ordinance.

#### Section 10.0 Action

The Authority shall act upon an application within sixty (60) calendar days after the conclusion of the hearing, except in the case of emergency and minor permits, or in cases where the Authority requires further information or finds that the issues require further clarification, or where an extension has been agreed to by the applicant. Such action shall be final, unless otherwise mandated by court order when a judicial review is sought, pursuant to Chapter 91, HRS.

When a minor or special management area use permit application is denied, an application involving the same or substantially the same development may not be filed sooner than one (1) year following such denial.

The duration of any validly issued minor or special management area use permit shall be two (2) years unless otherwise specified.

No development shall be allowed within the special management area without first obtaining a permit pursuant to these Rules and Regulations.

No County department or State agency authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received from the Authority in accordance with the procedures adopted pursuant to these Rules and Regulations. For the purposes of this Section, County General Plan, State land use district boundary amendments, and zoning changes are not permits for development.

#### Section 11.0 Emergency Permits

In case of emergency repairs to existing public utilities including, but not limited to water, gas, and electric transmission lines and highways, the respective governmental department or public utility company is waived from obtaining a permit pursuant to these Rules and Regulations. Such repair shall be recorded with the Authority upon its completion. In cases of imminent substantial harm to public health, safety, or welfare in the County of Kauai, the Mayor or Director may waive the requirements of obtaining a permit pursuant to these

Rules and Regulations. In the event of State-declared emergencies, the Governor, upon conferral and recommendation from the Mayor, may waive the requirements pursuant to these Rules and Regulations.

#### Section 12.0 Exemptions

These Rules and Regulations shall not apply to developments or structures for which a building permit, planned development permit, planned unit development permit or ordinance or special permit for cluster development was issued prior to December 1, 1975, or to subdivisions of property into single-family residential lots of one acre or less which have received final approval and on which subdivision improvements including but not limited to, grading, utilities, roads, street lighting and all required on-site and off-site improvements have been completed prior to December 1, 1975.

#### Section 13.0 Penalties and Injunctions

- A. Any person who violates any provision of these Rules and Regulations shall be subject to civil fine not to exceed \$10,000. In addition to any other penalties, any person who performs any development in violation of this part shall be subject to civil fine not to exceed \$500 a day for each day in which such violation persists.
- B. Any person violating any provision of these Rules and Regulations may be enjoined by the Circuit Court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of these Rules and Regulations in a suit brought by the Agency.

#### Section 14.0 Appeals

Any person including an applicant for a permit, aggrieved by the decision or action of the Authority shall have the right to judicial review of any decision or action of the Authority, pursuant to Chapter 91 of the Hawaii Revised Statutes.

#### Section 15.0 Severability

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision or application, and to this end the provisions of these Rules and Regulations are severable.



Section 16.0 Effective Date

These Rules and Regulations shall take effect on December 1, 1975. Any amendments to these Rules and Regulations, duly approved, shall take effect upon the date of such approval.

Section 17.0 Petition for the Adoption, Amendment or Repeal of Special Management Area Rules and Regulations

A. Petition

Any interested person may petition the Authority requesting the adoption, amendments or repeal of any provision of these Rules and Regulations.

B. Submission

Sixteen (16) sets of the petition shall be submitted on a form prescribed by the Agency. Said petition shall be submitted to the Agency and shall include the following:

- (1) A statement of the nature of the petitioner's interest.
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.
- (3) An explicit statement of the reasons in support of the proposed rule, amendment or repeal. Said reasons shall discuss the relationship of the proposed change with the Environmental Shoreline Protection Law, Chapter 205 HRS, and other applicable State or County ordinances or regulations.
- (4) A filing fee of \$150 if a public hearing is scheduled.

C. Disposition of Petition

- (1) The Authority shall within forty-five (45) days after acceptance of the petition either deny the petition in writing, stating its reasons for such denial, or schedule a public hearing on the petition to be held no earlier than thirty (30) days but no later than ninety (90) days after the acceptance of the petition. The Authority shall give written notice once in a newspaper of general circulation.

circulation in the State, at least twenty (20) days prior to this hearing. The notice shall state the nature of the petition and the time and place of the public hearing.

- (2) The Authority shall take action on the petition no earlier than fifteen (15) but no later than ninety (90) days after the final public hearing.

D. Retroactivity of Amendments

Additional procedural or substantive requirements imposed by amendments to these Rules and Regulations shall not be retroactively applied to developments for which a valid special management area use, minor or emergency permit has been issued, unless expressly provided in the amendment.

Section 18.0 Amendment of Special Management Area (SMA) Maps

- A. All changes for boundary amendments to the SMA maps shall be initiated by the Director.

B. Procedure

A change in the boundary of the SMA maps may be requested by any of the following:

- (1) Any department or agency of the State or County.
- (2) Any owner or lessee of the affected land.
- (3) County Council.

C. Submission

- (1) Sixteen (16) sets of the request shall be submitted on a form prescribed by the Agency and shall be accompanied by:
  - (a) A filing and processing fee of \$150.
  - (b) A description of the property in sufficient detail to determine its precise location.
  - (c) An explicit statement of the reasons in support of the proposed amendment. Said reasons shall also discuss the relationship of the proposed change with the policies and objectives of the regulations and the County General Plan.

- (2) The Authority shall hold a public hearing no earlier than thirty (30) but no later than ninety (90) calendar days upon receipt of a properly-filed application. The Authority shall give written notice once in a newspaper of general circulation in the County and once in a newspaper of general circulation in the State, at least twenty (20) calendar days in advance of the public hearing. The notice shall state the nature of the petition, its specific location, and the time and place of the public hearing.
- (3) The Authority shall no earlier than fifteen (15) but within ninety (90) calendar days after the public hearing, deny or approve the request in writing, stating the reasons for such action.

D. Exemption of Previously Approved Developments

Any development which was issued an appropriate zoning, use, project development or building permit, or received preliminary subdivision approval before the adoption and approval by the mayor of these amendments to the special management area boundaries which result in the inclusion of the development within the special management area, is not subject to special management area permit requirements. The pertinent permit or approval, however, must be unexpired. For a permit or an approval which was issued without expiration date or duration period, the exemption provided herein shall lapse two years from the date of approval of the boundary amendment by the mayor unless otherwise extended.

## APPENDIX

Approval and Adoption: The Planning Commission of the County of Kauai, State of Hawaii, approved and adopted these rules on December 12, 1979. The Mayor of the County of Kauai approved these rules on December 17, 1979. The rules were filed in the Office of the Clerk of the County of Kauai on December 17, 1979

Amendment: The Planning Commission of the County of Kauai, State of Hawaii, approved and adopted an amendment to "Section 10.0 Action" on January 14, 1981. The Mayor of the County of Kauai approved the amendment on January 16, 1981. The amendment was filed in the Office of the Clerk of the County of Kauai on January 16, 1981.

Amendment: The Planning Commission of the County of Kauai, State of Hawaii, approved and adopted amendments to "Section 1.1 Authority", "Section 1.4 Definitions, paragraphs T., V., X., Y. and Z.", "Section 6.0 Consultation", "Section 7.1 Filing, paragraph D.", "Section 7.2 Assessment, paragraph A.", "Section 7.3 Determination, paragraph B.(2) and C.(2)" and "Section 8.0 Application Procedure" on August 24, 1983. The Mayor of the County of Kauai approved the amendments on August 26, 1983. The amendments were filed in the Office of the Clerk of the County of Kauai on August 29, 1983.

AN AMENDMENT TO THE SPECIAL MANAGEMENT AREA  
RULES AND REGULATIONS OF THE COUNTY OF KAUAI  
(As Amended)

The Planning Commission of the County of Kauai hereby amends the Special Management Area Rules and Regulations as follows:

SECTION 1: Section 1.1 of the SMA Rules and Regulations entitled Authority is amended to read as follows:

"1.1 Authority

Pursuant to authority conferred by Chapter 205A, Hawaii Revised Statutes, as amended by Acts 176, 188, 200, [and] 126, and 113, Session Laws of Hawaii 1975, 1977, 1979, [and] 1982, and 1984, respectively, the rules and regulations hereinafter contained are hereby established and shall apply to all lands within the special management area of the County of Kauai."

SECTION 2: Section 1.4 of the SMA Rules and Regulations entitled Definitions is amended by adding four new sub-paragraphs to definition "H. (2)" to read as follows:

"H. "Development" means any of the uses, activities, or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (2):

(1) "Development" includes the following:

- (a) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (b) Grading, removing, dredging, mining, or extraction of any materials;
- (c) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (d) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (e) Construction, reconstruction, demolition, or alteration of the size of any structure.

(2) "Development" does not include the following:

- (a) Construction of a single-family residence that is not part of a larger development;

- (b) Repair or maintenance of roads and highways within existing rights-of-ways;
- (c) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (d) The 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;
- (e) Zoning variances, except for height, density, parking, and shoreline setback;
- (f) Repair, maintenance, or interior alterations to existing structures;
- (g) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (h) The use of any land for the purpose of cultivating, planting, growing, and harvesting of plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture;
- (i) The transfer of title to land;
- (j) The creation or termination of easements, covenants, or other rights in structures or land;
- (k) The subdivision of land into lots greater than twenty acres in size; [and]
- (l) The subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
- (m) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
- (n) Structural and non-structural improvements to existing single-family residences including

additional dwelling unit, where otherwise permissible;

(o) Non-structural improvements to existing commercial structures; and

[(1)] (p) The amendment of the County general plan, development plans, State land use district boundaries, and zoning changes."

SECTION 3. Section 1.4 of the SMA Rules and Regulations entitled Definitions is amended by amending definitions "S", "U", and "X" to read as follows:

"S. "Special Management Area Emergency Permit" means an action by the Director, pursuant to authority provided him by the Authority and defined in these Rules and Regulations, 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."

"U. "Special Management Area Use Permit" means an action by the Authority authorizing development, the valuation of which exceeds \$65,000 or which may have a significant adverse environmental or ecological effect, taking into account potential cumulative effects."

"X. "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 [in paragraph H. (1)] above, the fair market value of the development."

SECTION 4: Section 4 of the SMA Rules and Regulations entitled Special Management Area Guidelines is amended by amending subsection "B" to read as follows:

"B. No development shall be approved unless the Authority has first found that:

(1) 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, and welfare, or compelling public interest. Such adverse effect 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;

- (2) The development is consistent with the objectives and policies, as enumerated in Chapter 205A, HRS, and as recited herein under Section 3.0, above; and special management area guidelines set forth in these Rules and Regulations[.]; and
- (3) The development is consistent with the County general plan[, ] and zoning[, subdivision, and other applicable] ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required."

SECTION 5: New material is underscored. Material to be deleted is bracketed. Any reprint of the rules and regulations, as amended need not include the brackets, bracketed material and underscoring. Furthermore, the authority charged with the reprinting of the rules and regulations is authorized to correct any obvious nonsubstantive grammatical errors where deemed necessary.

SECTION 6: The amendment shall take effect upon its approval.

The Planning Commission of the County of Kauai, State of Hawaii, approved and adopted the foregoing amendments to the SMA Rules and Regulations on this 12th day of December, 1984.

PLANNING COMMISSION  
COUNTY OF KAUAI

\_\_\_\_\_  
CHAIRMAN

Notice of Public Hearings: THE GARDEN ISLAND - County of Kauai  
Date: 10/22/84  
HONOLULU STAR-BULLETIN - State of Hawaii  
Date: 10/22/84

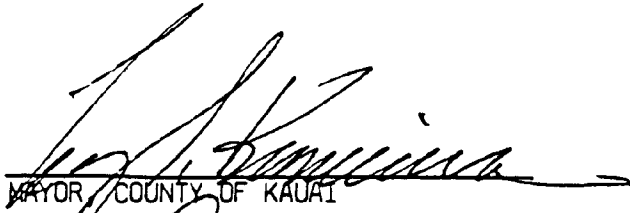
APPROVED AS TO FORM:

\_\_\_\_\_  
DEPUTY COUNTY ATTORNEY

Date: 12/18/84

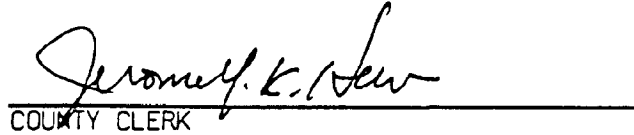


APPROVED:

  
MAYOR, COUNTY OF KAUI

Date: Dec. 18, 1984

I hereby certify that the foregoing rules were received and filed in my office this 19<sup>th</sup> day of December A.D. 1984.

  
COUNTY CLERK

AN AMENDMENT TO THE SPECIAL MANAGEMENT AREA  
RULES AND REGULATIONS OF THE COUNTY OF KAUAI  
(As Amended)

The Planning Commission of the County of Kauai hereby amends the Special Management Area Rules and Regulations as follows:

SECTION 1: Section 1.1 of the SMA Rules and Regulations entitled Authority is amended to read as follows:

"1.1 Authority

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SECTION 2: Section 1.4 of the SMA Rules and Regulations entitled Definitions is amended by adding four new sub-paragraphs to definition "H. (2)" to read as follows:

"H. "Development" means any of the uses, activities, or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (2):

(1) "Development" includes the following:

- (a) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (b) Grading, removing, dredging, mining, or extraction of any materials;
- (c) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (d) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (e) Construction, reconstruction, demolition, or alteration of the size of any structure.

(2) "Development" does not include the following:

- (a) Construction of a single-family residence that is not part of a larger development;

- (b) Repair or maintenance of roads and highways within existing rights-of-ways;
- (c) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (d) The 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;
- (e) Zoning variances, except for height, density, parking, and shoreline setback;
- (f) Repair, maintenance, or interior alterations to existing structures;
- (g) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (h) The use of any land for the purpose of cultivating, planting, growing, and harvesting of plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture;
- (i) The transfer of title to land;
- (j) The creation or termination of easements, covenants, or other rights in structures or land;
- (k) The subdivision of land into lots greater than twenty acres in size; [and]
- (l) The subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
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additional dwelling unit, where otherwise permissible;

(o) Non-structural improvements to existing commercial structures; and

[(1)] (p) The amendment of the County general plan, development plans, State land use district boundaries, and zoning changes."

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"U. "Special Management Area Use Permit" means an action by the Authority authorizing development, the valuation of which exceeds \$65,000 or which may have a significant adverse environmental or ecological effect, taking into account potential cumulative effects."

"X. "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 [in paragraph H. (1)] above, the fair market value of the development."

SECTION 4: Section 4 of the SMA Rules and Regulations entitled Special Management Area Guidelines is amended by amending subsection "B" to read as follows:

"B. No development shall be approved unless the Authority has first found that:

(1) 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, and welfare, or compelling public interest. Such adverse effect 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;

- (2) The development is consistent with the objectives and policies, as enumerated in Chapter 205A, HRS, and as recited herein under Section 3.0, above; and special management area guidelines set forth in these Rules and Regulations[.]; and
- (3) The development is consistent with the County general plan[,], and zoning[, subdivision, and other applicable] ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required."

SECTION 5: New material is underscored. Material to be deleted is bracketed. Any reprint of the rules and regulations, as amended need not include the brackets, bracketed material and underscoring. Furthermore, the authority charged with the reprinting of the rules and regulations is authorized to correct any obvious nonsubstantive grammatical errors where deemed necessary.

SECTION 6: The amendment shall take effect upon its approval.

The Planning Commission of the County of Kauai, State of Hawaii, approved and adopted the foregoing amendments to the SMA Rules and Regulations on this 12th day of December, 1984.

PLANNING COMMISSION  
COUNTY OF KAUAI

  
\_\_\_\_\_  
CHAIRMAN

Notice of Public Hearings:

THE GARDEN ISLAND - County of Kauai

Date: 10/22/84

HONOLULU STAR-BULLETIN - State of Hawaii

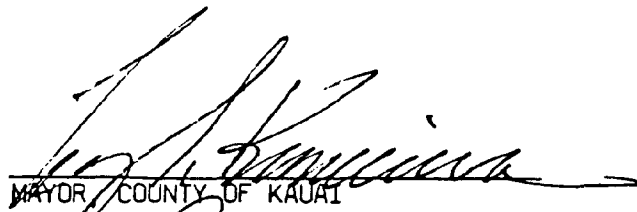
Date: 10/22/84

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DEPUTY COUNTY ATTORNEY

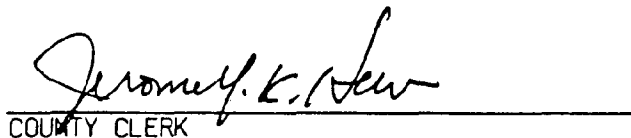
Date: 12/18/84

APPROVED:

  
MAYOR, COUNTY OF KAUAI

Date: Dec. 18, 1984

I hereby certify that the foregoing rules were received and filed in my office this 19<sup>th</sup> day of December A.D. 1984.

  
COUNTY CLERK

**APPENDIX H**

**FLORIDA'S BEACH AND COAST  
PRESERVATION PROGRAM  
(EXCERPTED MATERIAL)**

**SPEC 88-2**

# **FLORIDA'S BEACH AND COAST PRESERVATION PROGRAM: AN OVERVIEW**

by

**James H. Balsillie**

**Beaches and Shores  
Special Report No. 88-2**

**February 1988**



**Analysis/Research Section  
Bureau of Coastal Data Acquisition  
Division of Beaches and Shores  
Florida Department of Natural Resources**



FLORIDA'S BEACH AND COAST PRESERVATION PROGRAM: AN OVERVIEW

by

James H. Balsillie

Analysis/Research Section, Bureau of Coastal Data Acquisition,  
Division of Beaches and Shores, Florida Department of Natural  
Resources, 3900 Commonwealth Blvd., Tallahassee, FL 32399-3000.

ABSTRACT

The purpose of this document is to provide a general description of the mission of the Florida Department of Natural Resources, Division of Beaches and Shores. The paper is organized about program elements (e.g., control line establishment, permitting, etc.) rather than by organizational units (e.g., bureaus, offices, sections); organizational units are, however, related to program element responsibilities. The table of contents provides a convenient guide to major program responsibilities.

INTRODUCTION

In 1970, the Legislature of the State of Florida made the following statements.

The attraction of Florida's beautiful beaches and shores account for a substantial portion of the states annual tourist trade;

Beach and shore erosion is a serious menace to the economy and general welfare of the people of this state;

Unguided development of these beaches and shores coupled with uncontrolled erosive forces are destroying or substantially damaging many of our valuable beaches each year;

Preservation of our beaches and shores is therefore a subject of great public interest and concern which requires appropriate action by the Legislature to prevent further loss to one of our greatest natural resources;

The greater public interest compels that certain reasonable restrictions be placed upon the location

of coastal construction and excavation even though such construction or excavation be located on privately held land.

The legislature then passed into law the Beach and Shore Preservation Act (Chapter 161, Florida Statutes), charging the Florida Department of Natural Resources (through the Division of Beaches and Shores) with the responsibility of its administration. The early history of the program (from about 1971 to 1974) has been chronicled by Purpura (1972) and Purpura and Sensabaugh (1974).

Through the years, however, the program of beach and coast preservation has reached a level of significant specialization with regard to technical issues quantifying natural processes, as well as a broadened program format. Presently, major program elements include the establishment of regulatory jurisdictions, construction regulation and enforcement activities, technical aspects related to the preceding, and a funding mechanism for public civil works type projects (a generalized flow chart showing how the Division of Beaches and Shores is organized is given in Figure 1 for future reference). It is the purpose of this document to provide an overview of these program elements. ✓

#### CONTROL LINE PROGRAM

The establishment of Coastal Construction Control Lines (CCCLs) is administered by the Bureau of Coastal Data Acquisition. Such establishment is required pursuant to section 161.053, F. S., which in part reads:

The legislature finds and declares that the beaches of the state, by their nature, are subject to frequent and severe fluctuations and represent one of Florida's most valuable natural resources and that it is in the public interest to preserve and protect them from imprudent construction which can jeopardize the the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, and endanger adjacent property and the beach-dune system. In furtherance of these findings, it is the intent of the Legislature to provide that the department, acting through the division, shall establish coastal construction control lines on a county basis along the sand beaches of the state fronting on the Atlantic Ocean and the Gulf of Mexico. Such lines shall be established so as to define that

portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge of other predictable weather conditions, and so as to define the area within which special structural design consideration is required to insure protection of the beach-dune system, any proposed structure, and adjacent properties, rather than to define a seaward limit for upland structures.

It is to be noted that the "Big Bend" counties (i.e., Wakulla through Pasco, inclusive) and Monroe County, because they are not considered sandy-beach counties, do not have CCCLs. Currently, all counties within program jurisdiction have setback or control lines established, and second review phase is in progress.

Establishment of CCCLs on a county-by-county basis requires three significant efforts: 1. field data collection, 2. storm tide and dune erosion modeling, and 3. CCCL restudy and adoption.

#### Field Data Collection

The basis of the field data collection effort conducted by the Bureau of Coastal Data Acquisition is the maintenance of DNR reference monuments installed at 1000-foot alongshore intervals upland of Florida's ocean-fronting beaches (Penquite, Bean and Balsillie, 1983). These monuments are referenced to a system of massive monuments located further inland (the latter to serve as a backup system for reference monument recovery and to enhance surveying control); both are tied into the state plane coordinate system.

As a part of a control line study, profiles are measured at each reference monument. Beach profiles extend from behind the dunes into the surf; special features such as the vegetation line and existing structures such as seawalls are noted and recorded. Offshore profiles are surveyed at every third reference monument, extending from the surf to about 3000 feet offshore to water depths of from 25 to 30 feet. Details of field measurement equipment and methods used are discussed by Sensabaugh, Balsillie, and Bean (1977); adequacy of the offshore surveying methodology is given by Balsillie (1987).

To date over 9,800 beach profiles and over 2,300 offshore profiles have been measured (see Table). In addition to control line surveys, periodic condition surveys and post-storm surveys are also conducted. The pre- and post-storm and hurricane data base is one the most comprehensive in existence.

Data obtained from this effort are stored in the Beaches and Shores computerized profile data base. Data so managed remains immediately available for a variety of task-oriented applied coastal engineering purposes.

Controlled, stereoscopic aerial photography is flown for each control line study. It is reproduced to provide detailed working photomap formats at a scale of 1 inch = 100 feet. DNR reference monuments (targetted prior to photo flights) are plotted on the photomaps, as are photogrammetrically generated contours (2-foot contour interval) delineating beach and dune details.

### Storm Tide and Dune Erosion Modeling

In 1978 the Legislature modified chapter 161, F. S., to place greater emphasis on the storm tide accompanying the design hurricane event in order to determine the location of CCCLs. The task was contracted to outside expertise at the Beaches and Shores Resource Center, Institute of Science and Public Affairs, Florida State University, which uses the storm tide model of Dr. Robert G. Dean. The model is used to determine the "combined total storm tide" defined (e.g., Dean, Chiu, and Wang, 1987) as the storm tide due to astronomical tide, wind stress and barometric pressure effects combined with the dynamic wave set-up. The results provide valid estimates of the storm tide for return periods of 10, 50, 100, 200, and 500 years. As of the date of preparation of this paper, 15 counties have been studied out of a total of 24 coastal counties under program jurisdiction (Figure 2). Return period storm tide levels for the Florida east coast are plotted in Figure 3, for the lower gulf coast in Figure 4, and for the northwest panhandle coast in Figure 5. Combined storm tide and CCCL studies on a county basis are listed in the references.

In addition to water levels and wave heights, it is desirable to know of dune/bluff erosion expected from design storm impact. The staff of the Beaches and Shores Resource Center utilize beach/coast erosion computer modeling programs to realize this goal. An example of a dune erosion prediction for a 100-year return storm tide event is given in Figure 6.

Results from these numerical models can be realized only only through the use of a computer processor with scientific capability. In particular, the storm tide model, requires massive computer processor resources due to both large arrays of information and iterative computations involved.

## Control Line Adoption and Restudy

Following consideration of the collected field data, storm tide results, historical and predicted erosion trends, existing upland development, etc., the contracted expertise of the Beaches and Shores Resource Center recommends to the Department location(s) of the CCCL for a given county under study (see Chiu and Dean, 1984). Upon review by the Department, Florida law (subsection 161.053 (2), Florida Statutes) requires:

No such line shall be set until a public hearing has been held for each area involved. After giving consideration to the results of said public hearing, it shall, ... set and establish a coastal construction line and cause same to be duly recorded in the public records of any county and municipality affected and shall furnish the clerk of the circuit court in each county affected a survey of such line with references at such intervals and locations as may be considered necessary.

The impression is often given that the CCCL for a given county is a straight line or relatively small number of lines when, in fact, a CCCL has many linear segments commonly changing direction at each DNR reference monument, and may even change direction between monuments. For this reason, the Field Surveying Section of the Bureau of Coastal Data Acquisition is involved with maintaining precise surveying control of the CCCLs with reference monuments, massive monuments, and the state plane coordinate system.

Restudy of CCCLs is at the discretion of the Department or may be initiated at the request of officials of affected counties or municipalities. The Department may after consideration of hydrographic and topographic data which indicates shoreline changes that render established lines to be ineffective, authorize a review. Based upon the time required and computer resources available, the Division schedules the review of about 5 counties per year. The scheduling is flexible, however, since storm or hurricane impact or other erosion trends, or litigation related to the hearing and CCCL establishment process can cause delays.

## THIRTY-YEAR EROSION PROJECTION PROGRAM

Legislation, enacted in 1985, entitled the Growth Management Amendment (GMA) subject to provisions of subsection 161.053(6), Florida Statutes, requires that in addition to extreme event impacts of above, that long-term shoreline change trends be employed to regulate coastal

development activities. The law states:

After October 1, 1985, and notwithstanding any other provision of this part, the department, or a local government to which the department has delegated permitting authority pursuant to subsections (4) and (15), shall not issue any permit for any structure, other than a coastal or shore protection structure, minor structure, or pier, meeting the requirements of this part, or other than intake and discharge structures for a facility sited pursuant to part II of chapter 403, which is proposed for a location which, based on the department's projections of erosion in the area, will be seaward of the seasonal high-water line within 30 years after the date of application for such permit. The procedures for determining such erosion shall be established by rule. In determining the area which will be seaward of the seasonal high-water line in 30 years, the department shall not include any areas landward of a coastal construction control line.

The "seasonal high-water line" is defined as the line formed by the intersection of the rising shore and the elevation of 150 percent of the local mean tidal range above local mean high water.

While the Beaches and Shores profile data base is one of the most comprehensive and largest of its kind, the field data collection effort of the Bureau of Coastal Data Acquisition has been in effect only since 1971. These data, which are tailored for use in the establishment of CCCLs, do not cover a sufficient historical period to reliably allow for assessment of long-term shoreline changes. Therefore, the Division has entered into contracts on a county-by-county basis to obtain historical shoreline data for the period from about 1850 to 1971. Procedures for obtaining acceptable data, analysis of the data for determining rates, and establishment of a data base are given in section 16B-33.024, F. A. C. (see also Balsillie, and Moore, 1985; Balsillie, 1985e).

An example of shoreline change rate data is illustrated for 4 DNR reference mounuments in Figure 7. Using such rates as specified in section 16B-33.024, F. A. C., and seasonal high-water, the 30-year erosion projection may be determined as illustrated in Figure 8. The Analysis/Research section is responsible for final determination of shoreline rate data.

Pending the completion of offical county reports on shoreline change rates, the engineering staff of the Division remains available, based on existing data, to determine least ambiguous rates on a site-by-site basis. Preliminary rates are available for Gulf (Balsillie, 1985f) and Bay (Balsillie,

## REGULATORY PROGRAM

The order of appearance of program elements in this paper is based upon logical progression. For instance, without the preceding elements which define a sound scientific and engineering basis for establishment of jurisdiction and state-of-the-art knowledge, a credible regulatory program would be hard-pressed to endure. Regulatory responsibilities are conducted by the Bureau of Coastal Engineering and Regulation.

### Permitting

Concerning control line regulation of Florida beach and coast activities, Section 161.053, F. S., stipulates:

Upon the establishment, approval, and recordation of such coastal construction control line or lines, no person, firm, corporation, or governmental agency shall construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; drive any vehicle on, over, or across any sand dune or the vegetation growing thereon seaward thereof except as ..... (provided by the act).

Regulatory aspects of the provisions of Chapter 161, F. S. are implemented by Chapter 16B-33 of the Florida Administrative Code (F. A. C.). This rule sets forth the requirements and procedures relating to coastal construction, excavation and alteration seaward of CCCLs to include: 1. procedures for surveying, 2. procedures for processing applications for permits to conduct activities seaward of CCCLs, and 3. conditions to be placed upon permits. Because of its highly detailed nature, it is not possible to present an in-depth discussion of this rule. However, with regard to the permit application review process, it is possible to highlight some of the more important review issues.

When applying for a permit (DNR Form 32-600) the applicant, in addition to supplying obvious identifying administrative information, is required to provide technically oriented data. These include: 1. a recent topographic survey (within 6 months from the date of application) certified by a land surveyor registered in the State of Florida, providing topographic information including the location of the water's edge, vegetation line, the coastal construction control line referenced to the closest two DNR reference monuments, and

any existing structure(s) on the subject and adjacent properties, 2. detailed site, grading, drainage and structural plans and specifications for all proposed activities including subgrade construction or excavation with pertinent engineering calculations and elevations referenced to datum, and 3. other site-specific information deemed necessary by the Division professional staff for evaluation of the application.

Design force element categories considered by the coastal engineering staff include the wind, storm tide water levels, and waves which propagate upon the storm surge.

The design wind velocity, for structural loading computations, is based on a minimum of 140 mph (Balsillie, 1978) using boundary layer formulation cited in the rule, including appropriate shape factors in accordance with standard building code practice.

All major structures are required to be elevated on, and securely anchored to, an adequate piling foundation such that the underside of the lowest supporting structural member excluding the piling foundation, shall be above the 100-year return storm surge plus an additional vertical distance to allow for appropriate, site specific design wave activity. The staff is also required to consider federal base flood elevations recommended by FEMA's Federal Insurance Administration. The piling foundation must be designed to withstand all reasonably anticipated loads resulting from a 100-year return hurricane including at least wind and wave forces acting simultaneously with typical structural loads. No substantial walls or partitions are allowed below the first finished floor and seaward of the CCCL. The elevation of the "soil surface" used in the calculation of piling reactions and bearing capacities is that which is reasonably expected from anticipated beach and dune erosion (including dune-bluff recession and local scour) due to the 100-year design storm.

Coastal or shore protection structures extending totally or in part seaward of the CCCL are required to be designed to resist the predicted natural forces consistent with the proposed usage and design life of the structure. Design considerations for such structures include structural siting, crest and toe elevations, structural slope(s), components as impacted by waves superimposed upon the design storm tide, expected scour, and impact on the beach-dune system and adjacent properties.

The applicant is also required to furnish the Department with certification by a professional engineer or architect, registered in the State of Florida, that the design plans and specifications submitted as a part of the application are in compliance with provisions of the rule.

In addition to technical issues, beach-dune preservation and project siting are considered. While the program



acknowledges the existing line of construction as well as reasonable use of property, efficient usage of property upland of the CCCL is prerequisite to a favorable staff recommendation for a permit. Considered in the review process are construction impacts on the beach and coast (e.g., dunes), adjacent property and potential alongshore cumulative impacts, public access, vegetation, and nesting turtles.

In addition to use of latest editions of the Standard Building Code (Southern Standard Building Code Congress International, Inc.), South Florida Building Code, Shore Protection Manual (U. S. Army, 1984, Coastal Engineering Research Center), and other pertinent design force documents (e.g., CERC and ASCE technical publications, FEMA's Design and Construction Manual for Residential Buildings in Coastal High Hazard Areas), etc., the Division is authorized to compile Beaches and Shores Technical and Design Memoranda (State of Florida, 1987).

A distinction is made between major structures (e.g., houses, condominiums, motels, restaurants, seawalls, swimming pools) and minor structures (e.g., pile supported dune walkovers and viewing platforms, beach access ramps, cantilevered decks or porches). Minor structures are not required to meet specific structural requirements for wind and waves, but are required to be designed to produce minimum adverse impact on the beach-dune system and adjacent property and to reduce the potential for generating aerodynamically or hydrodynamically propelled missiles.

Following completion of the permit application review process, the coastal engineering staff of the Bureau of Coastal Engineering and Regulation make a recommendation with supporting evidence of either approval or denial. While the Department of Natural Resources has delegated approval/denial authority for certain types of projects, substantive projects must go to the Florida capitol for further review. Final decision-making authority rests with the Governor and six member Cabinet, who convene twice-monthly to deliberate such matters.

The permitting workload of the Division of Beaches and Shores by year for the period 1970-1986, is illustrated in Figure 10.

#### Enforcement

Violations of Chapter 161, F. S., or any supporting rules are prosecuted, accompanied by a fine of each offense in an amount up to \$10,000 to be fixed, imposed and collected by the Department. Each day during any portion of which such violation occurs constitutes a separate offense. Discovery and monitoring of violations and the progress of permitted activities are made by a staff of field inspectors of the

Field Inspection Section, and periodic site visits by the coastal engineering staff. Physical mitigation including removal or modifications are additional enforcement options. Violation investigations and processing is administered by the Office of Administrative Enforcement.

#### Records Management

Administrative aspects of the Bureau of Coastal Engineering and Regulation requires the processing of significant amounts of paperwork. It is the responsibility of the Documents/Records Management Section to maintain the Bureau's permit filing system and permit activity computer data base. The section serves as a resource for procedural consistency and adequacy in correspondence and permitting by maintaining a system of forms and form letters, coordinates follow-up on permit compliance including progress monitoring and final certification reports, and handles procedural matters for permit time extensions and transfers. Requests for public records in the custody of the Bureau are handled by the section.

#### BEACH EROSION CONTROL PROGRAM

The popularity of any governmental unit which regulates activities of the public and private sector is, at best, a controversial subject. It is optimistic, therefore, that if a program is to regulate to preserve a natural resource, that an assistance program is in place to provide aid commensurate and consistent with program goals. Such is the Beach Erosion Control Program.

#### General Program Description

Pursuant to section 161.101, F. S., the Department of Natural Resources is constituted as the beach and shore preservation authority for the State. Further, there is created in the State Treasury (section 161.091, F. S.) an Beach Management Trust Fund administered by the Office of Erosion Control through the Department to which the Legislature may make appropriations and authorize expenditures. Funds in the account are available to assist in the realization of State responsibilities toward comprehensive, long-range, State-wide plans for erosion control, beach preservation and hurricane protection.

Detailed specifications of the provisions of 161.091, F. S., are implemented in Chapter 16B-36, F. A. C. This rule sets forth policies and procedures for administering the Beach Erosion Control Assistance Program to provide funding assistance to local governments in support of

alleviating serious sandy beach erosion problems and for the protection and preservation of sandy beach resources of Florida.

Based on the availability of Beach Management Trust Fund resources, the Division through the Department may recommend approval to the Governor and Cabinet for those projects found to be in support of beach preservation and erosion control activities. Such projects include:

- a. Beach restoration/renourishment,
- b. Sand transfer, bypassing and stockpiling,
- c. Jetties, groins, breakwaters, revetments,
- d. Sand trap construction and maintenance,
- e. Dune construction and revegetation,
- f. Beach-dune overwalks,
- g. Dune protective walkways or other measures for dune protection/preservation,
- h. Sand fencing,
- i. Biological and hydrological monitoring studies,
- j. Sand source studies,
- k. Educational signs, and
- l. Other projects of desirable intent.

Additionally, in order for a given project to be eligible for funding assistance two other significant constraints are required: First, the Legislature has declared it public policy of the State (section 161.141, F. S.) to establish for beach restoration, renourishment and erosion control projects, boundaries designating sovereignty jurisdiction. These boundaries, termed Erosion Control Lines (ECLs), are to be located a sufficient distance landward of the line of mean high water to provide for an equitable distribution of a restored beach between State and upland ownership (subject to provisions of sections 161.141 through 161.211, F. S.); the purpose is to guarantee public use of beach resources seaward of the ECL, generally prevailing for the engineered and maintained design life of the project. Second, the project applicant must provide permanent public access to project areas at approximately 1/2-mile intervals with adequate vehicle parking areas.

#### Comprehensive Beach Management Program

Pursuant to section 161.161, F. S., the Florida Department of Natural Resources, Division of Beaches and Shores is required to develop and maintain a comprehensive, long-term management plan for Florida's beaches on a district-by-district basis (Figure 11). Responsibilities include identification of areas of critical beach erosion, determination of the most viable means to address identified erosion problems, to recommend a list of beach erosion control projects, and to recommend solutions for enhancing and

protecting beach resources for review and action by the Governor and Cabinet and State Legislature.

Initial areas for which planning studies have been conducted include Districts III, IV, and VI (State of Florida, 1988).

#### RELATED STATE PROGRAMS

It would be misleading to suggest that the Florida Department of Natural Resources is only state agency which deals with Florida coastal issues. Following are simple descriptions of some programmatic efforts related to the mission of the division.

#### Institute of Science and Public Affairs

The Institute of Science and Public Affairs located at Florida State University in Tallahassee is made up of a number of centers which are available for conducting research for State government. Two of these centers have been of invaluable assistance to the Division of Beaches and Shores.

The Beaches and Shores Resource Center under the direction of Dr. T. Y. Chiu has been retained to run the R. G. Dean storm tide and erosion models and based upon such results to recommend to the Department locations for Coastal Construction Control Lines.

The Florida Resources Environmental Analysis Center (FREAC) has performed various services, most notably the discovery and analysis of historical shoreline surveys dating back to 1850 for use in determining long-term shoreline change rates.

#### Florida Coastal Management Program

The Florida Coastal Management Program was developed in response to the National Coastal Zone Management Act of 1972. This act provides for voluntary participation by coastal states to develop and maintain programs for carrying out a national policy "... to preserve, protect, develop, and where possible to enhance the resources of the Nation's coastal zone for this and future generations".

Under the federal act, eligible states receive federal funding assistance to implement their approved programs and to review federal activities for consistency with those programs.

The Florida Coastal Management Program, Florida Department of Environmental Regulation, includes 25 state laws, administered by 16 state agencies. Program components include the Interagency

Management Committee created by the Governor and Cabinet (comprised of the Secretaries and Executive Directors of state agencies), the Interagency Advisory Committee (comprised of technically oriented members of state agencies), the Citizen's Advisory Committee (public and citizen representatives appointed by the Governor for two-year terms), and the Federal Consistency effort (coordinated by the Office of the Governor and the Office of Coastal Zone Management).

#### Coastal and Oceanographic Engineering Department

The Coastal and Oceanographic Engineering Department at the University of Florida in Gainesville has, through the years been closely associated with the Division of Beaches and Shores, and has performed a multitude of coastal engineering services.

#### Coastal Zone Protection Amendment

The Florida Growth Management Amendment of 1985 created Part III of Chap. 161, F. S. This amendment extends construction jurisdiction upland of Coastal Construction Control Lines and defines zones where CCCLs are not established. Specifically, local communities are required to adopt acceptable standards for development activities. This part of Chap. 161, F. S., is administered by the Florida Department of Community Affairs, with the Division of Beaches and Shores providing technical guidance.

#### Florida Sea Grant Program

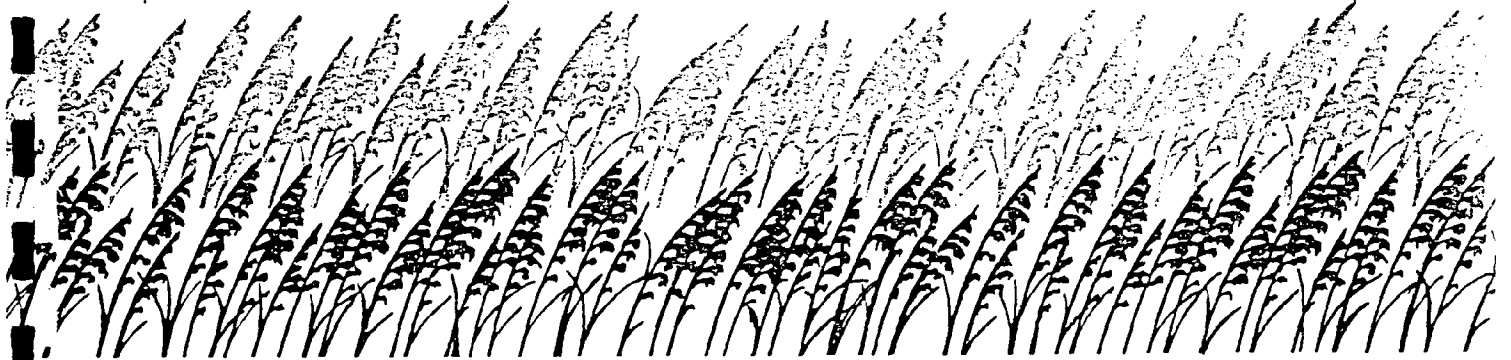
The federally funded Florida Sea Grant program provides a mechanism for funding academic technical research and provides an advisory program related to Florida's coastal issues.

#### Sea Level Rise Institute

The newly established Sea Level Rise Institute at Florida State University in Tallahassee will be concerned with public education and technical aspects related to the topic.

**APPENDIX I**

**A HANDBOOK FOR DEVELOPMENT  
IN NORTH CAROLINA'S COASTAL AREA**



**A HANDBOOK  
FOR DEVELOPMENT  
IN NORTH CAROLINA'S  
COASTAL AREA**



**Division of Coastal Management  
N.C. Department of Natural Resources  
and Community Development  
1985**

## Ocean Hazard Areas of Environmental Concern

In carrying out its responsibilities under the Coastal Area Management Act, the Coastal Resources Commission has designated four categories of Areas of Environmental Concern (AECs): **the estuarine system, the ocean hazard system, public water supplies, and natural and cultural resource areas.** These AECs, and the standards for development in them, cover the coastal waters and about three percent of the land area of the 20 coastal counties. The following descriptions of the ocean hazard system AECs will help you identify whether or not your project is located in an area of environmental concern, as well as explain each area's importance and the reasons why it is necessary to manage development there.

The **ocean hazard system** covers those lands along the oceanfront and along the state's many inlets that are vulnerable to storms, flooding, and erosion. The shape and location of these landforms, especially the beaches, dunes, and inlets, are always changing due to the forces of nature. The constant forces exerted by waves, wind, and water currents upon the sands of the ocean shoreline create a variety of hazards that threaten human activities along the oceanfront and inlets. During storms, these forces intensify and can quickly change the shape of the shoreline, beaches, and dunes, and damage any structures located on them. At the same time, the beaches and dunes also protect structures located behind them by absorbing the force of wind and waves.

Because of this special vulnerability to natural hazards and the need to maintain beaches and dunes, development in ocean hazard areas must be carefully designed to avoid losses of

life and property and damage to the natural environment. Absolute safety from destructive natural forces is impossible for development along the oceanfront. However, the loss of life and property from these forces can be greatly reduced by the proper location and design of oceanfront structures and by preventing damage to natural protective features such as primary and frontal dunes.

The Coastal Resources Commission has designated three ocean hazard AECs in which CAMA permits are required: **the ocean erodible area, the high hazard flood area, and the inlet hazard area** (see Figure 29). CAMA permit standards for development in these areas are designed to:

- minimize loss of life and property due to storms and long-term erosion;
- prevent the encroachment of permanent structures on public beaches; and
- reduce the costs that improperly designed development imposes on the public (e.g., funding of erosion control works, beach nourishment projects, disaster relief aid, and the like).

The three ocean hazard areas overlap in many places, even though they are separate AECs with their own standards for development. The Division of Coastal Management's field consultants have aerial photographs delineating the exact boundaries of all the ocean hazard AECs.

### Ocean Erodible Areas

The ocean erodible AEC covers the beaches and lands adjacent to the ocean which have a substantial possibility of long-term erosion and



significant shoreline changes. The seaward boundary of this AEC is the mean low water line. The AEC extends landward for a distance equal to 60 times the long-term average annual rate of erosion for that particular stretch of ocean shoreline, plus an additional distance where significant erosion can be expected during a major storm (see Figure 30). The width of this AEC varies for different sections of the oceanfront based on the Division of Coastal Management's analysis of historical erosion rates for each section of the Atlantic coast. The actual width of ocean erodible AECs along the coast varies from about 145 feet to over 700 feet.

#### High Hazard Flood Areas

The high hazard flood AEC covers lands subject to flooding, wave action, and high velocity water currents during a major storm. These are lands identified as Zones V1 to V30 on the flood insurance rate maps prepared for oceanfront communities by the Federal Insurance Administration. The area covered by "V-zones" is determined by an engineering analysis of expected flood levels during a storm, expected wave and current patterns, and the existing topography or "lay of the land." If the community does not have flood insurance rate maps available, other data on flooding, as approved by the CRC, may be used to define the high hazard flood AECs. The high hazard flood AEC overlaps with, but is usually wider than, the ocean erodible AEC.

#### Inlet Hazard Areas

Because they are adjacent to dynamic ocean inlets, inlet hazard AECs are especially vulnerable to erosion, flooding, and dramatic shore-

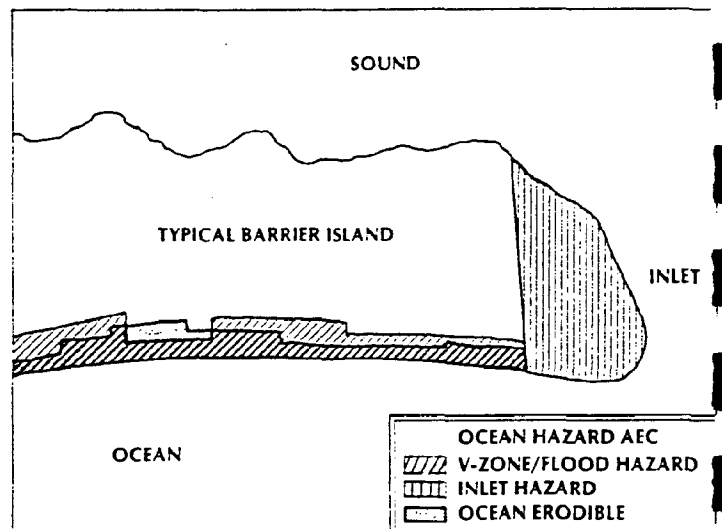


Figure 29. Ocean Hazard Areas of Environmental Concern.

line changes. Inlet hazard AECs are delineated on maps prepared by the Division of Coastal Management for each inlet along the coast based on an analysis of inlet migration rates and the lowness and narrowness of adjacent lands. The maps are reviewed and approved by the Coastal Resources Commission. In each case, the inlet hazard AEC extends landward from the mean low water line for a distance sufficient to encompass those lands where the inlet can be expected to migrate. The delineation of each area is based on a statistical analysis of inlet migration, previous inlet locations, relatively narrow or low areas near the inlet, and the influence of such manmade features as jetties and channelization projects.

The width of inlet hazard AECs varies from one inlet to the next; the AEC is narrower near relatively stable inlets and wider near more dynamic inlets. In all areas, the inlet hazard AEC covers, at a minimum, the same distance inland as the ocean erodible AEC. The inlet hazard AECs range in width from about 250 feet for a fairly stable inlet to about 4,000 feet for the most dynamic inlets.

## General Standards

### OCEAN HAZARD AECs

Ocean erodible areas face long-term erosion and sudden storm-induced shoreline changes. High hazard flood areas face flooding and wave wash during a hurricane, northeaster, or other major storm. Inlet hazard areas face long-term erosion, sudden shoreline changes, flooding, and storm waves. Development in these three areas can pose a serious threat to lives and property in oceanfront communities.

The Coastal Resources Commission has adopted general use standards for development within ocean erodible areas, high hazard flood areas, and inlet hazard areas. These standards protect human lives and property by guiding the location and design of oceanfront structures. They protect sand dunes from destruction. They reduce the costs that improperly designed development imposes on the taxpaying public for building and maintaining erosion control structures and beach nourishment projects and for funding disaster relief aid. They protect the public beach from structures that would interfere with the public's access to and use of the beach.

Any development project which requires a CAMA permit in an ocean erodible AEC, high hazard flood AEC, or inlet hazard AEC must meet the following standards (which are officially stated in Title 15, Subchapter 7H, Section .0306 of the N.C. Administrative Code) before a minor development permit or a major development permit can be granted.

- Development must be located and designed to minimize losses to life and property resulting from storms and long-term erosion, to

prevent encroachment of permanent structures on public beach areas, and to reduce the public costs of inappropriately sited development.

- Development in ocean hazard areas must incorporate all reasonable means and methods to avoid or minimize damage to the natural environment and access to the public beaches.

These include measures that will:

1. limit the scale of the project and the damage it causes;
2. restore the damaged environment; or
3. provide substitute resources to compensate for the damage.

- No development shall involve the significant removal or relocation of sands or vegetation from primary or frontal dunes.

Primary and frontal dunes help protect structures built behind them from erosion, flooding, and storm waves. They also play a vital role in maintaining the structure of North Carolina's barrier islands and beaches. The dense root networks of the vegetation that grows on dunes help trap and anchor the sand. The alteration of frontal and primary dunes, and the vegetation on them, can change natural beach renourishment patterns, disrupt the stability of the entire barrier island system, and increase the risk of damage to human structures from erosion, flooding, and waves.

- Development should be located as far back from the ocean as possible. At a minimum, small structures, such as beach cottages, must be located behind the erosion setback line,

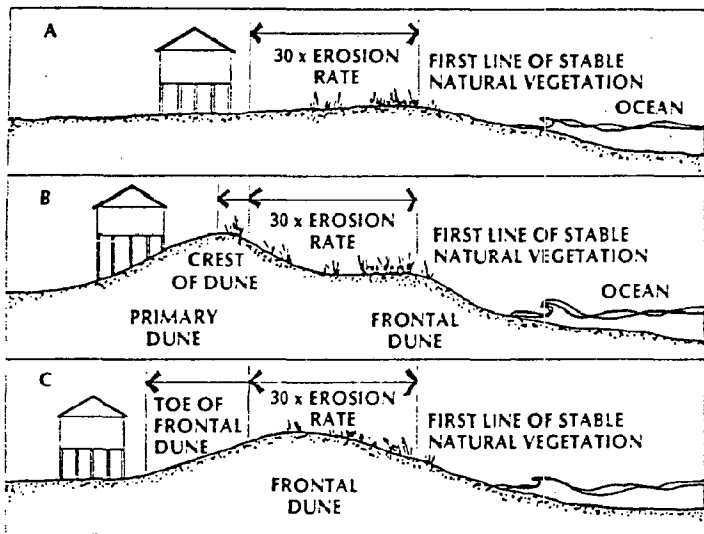


Figure 30. (A) (B) (C). Diagram of the different minimum oceanfront setbacks required when building small structures.

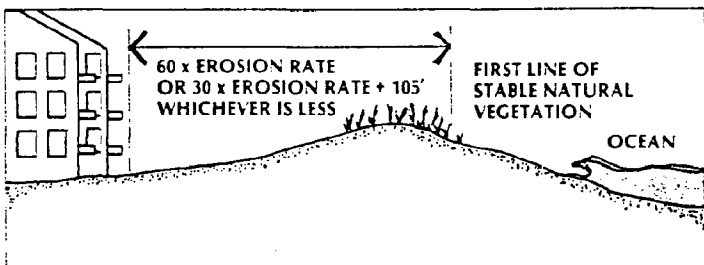


Figure 31. Diagram of minimum setback required when building large structures on the oceanfront.

the crest of the "primary dune" OR the landward toe of the "frontal dune," whichever is the farthest landward.

1. The "erosion setback line" (see Figure 30(A)) extends landward from the first line of stable natural vegetation to a distance equal to 30 times the average annual erosion rate at the site. In areas where erosion is less than two feet per year, there is a minimum setback required of 60 feet landward from the vegetation line.

Erosion rates for different segments of the state's ocean shoreline are determined by the Division of Coastal Management using an analysis of aerial photographs dating back to the 1930's. These rates are adopted by the Coastal Resources Commission to establish the "erosion setback line."

2. A "primary dune" is defined as the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level for the area plus six feet. The crest of the primary dune (see Figure 30(B)) is determined, on a case-by-case basis, by a DCM field consultant or local permit officer.
3. "Frontal dunes" are the first mounds of sand located landward of the ocean beach with sufficient vegetation, height, and configuration to offer protection from ocean storms. The landward toe of the frontal dune (see Figure 30(C)) is determined, on a case-by-case basis, by a DCM field consultant or local permit officer.

*NOTE: Man-made dunes created after June 1, 1979, will not be considered frontal or primary dunes.*

- Large-scale development, such as motels and condominiums, must meet an additional setback requirement, due to the unique physical, financial, and legal problems these structures pose. The following requirement applies to any structure of more than four dwelling units or 5,000 square feet (see Figure 31).

The erosion setback line for large structures extends landward from the first line of stable natural vegetation to a distance equal to 60 times the average annual erosion rate at the site. The maximum additional setback for large structures is 105 feet. For example, in an area with an average annual erosion rate of 10 feet per year, the setback for small structures would be 300 feet. In this same area the setback for large structures — if there were no ceiling level — would be 600 feet. Because the basic setback cannot be increased by more than 105 feet, the setback would be 405 feet: the 300-foot basic setback plus 105 feet.

- The permit applicant must sign an AEC Hazard Notice as part of the CAMA permit application to acknowledge that he or she is aware of the risks associated with development in the ocean hazard area and of the area's limited suitability for permanent structures. The hazard notice also states that the applicant is aware that no permanent erosion protection structures, such as wooden bulk-

heads, seawalls, and concrete breakwaters, may be built to protect oceanfront property. The preferred oceanfront erosion responses are beach nourishment and relocation of threatened buildings. Temporary erosion protection devices, such as low sandbag bulkheads and groins, may be permitted if certain conditions are met.

By granting permits, the Coastal Resources Commission does not guarantee the safety of the development; nor does the CRC assume liability for future damage to the development.

- All relocation of structures in ocean hazard areas requires permit approval. Structures relocated entirely with private funds shall be relocated as far landward of the present location as possible. Structures relocated with public funds shall move to behind the applicable oceanfront setback and comply with all other AEC standards.
- Development must meet all minimum lot size and setback requirements established by the local government. Counties and towns often adopt regulations requiring a setback from roads, property lines, dunes, and the like. Information on local setback requirements can be obtained from the local building inspector.
- The project must comply with the local land use plan. Each of the coastal region's 20 counties and nearly all of its incorporated towns have adopted local land use plans under the Coastal Area Management Act. A local land use plan contains the goals citizens have for their community, a set of policies

that the community will use to manage development to reach these goals, and a map classifying lands in the community according to the types of development that should occur on them. The Act requires projects receiving CAMA permits to comply with the local land use plan. If the local land use plan does not allow a certain type of development within the land classification where it is proposed, a CAMA permit cannot be issued for that project.

- **Mobile homes must not be placed within the high hazard flood area unless they are within mobile home parks that existed before June 1, 1979.**

Mobile homes are generally less able to withstand the flooding, wave wash, and high winds associated with hurricanes, northeasters, and other major storms that strike the North Carolina coast. Not only are they more likely to sustain damage than are other types of construction, they are also more likely to cause damage to other buildings by floating or blowing into them.

- **Development must not unduly interfere with the access to or use of public resources.**

The public has a right to reach, use, and enjoy those resources that belong to all the people of the state (such as the state's beaches and waters). Legal rights of access or use cannot be blocked by proposed development.

- **Development must not cause major or irreversible damage to valuable, documented historic architectural or archaeological resources.**

There are numerous sites along the coast which contain significant cultural resources that need to be protected. Historic architectural structures provide examples of important architectural styles and/or a legacy of people who have played an important role in the coastal region's history. Archaeological resources (such as sites containing the remains of Indian settlements, shipwrecks, and Civil or Revolutionary War artifacts) provide valuable information on the history of the coastal region and its people. These resources need protection, not only for historical and archaeological research, but also as lasting symbols of the coastal region's heritage. Information on the location of valuable architectural or archaeological sites can be obtained from the Division of Archives and History in the Department of Cultural Resources. (See appendices for address and phone number.)

- **In order to avoid excessive public expenditures for repairs, the construction or placement of a publicly funded facility (such as sewers, waterlines, roads, bridges, and erosion control works) will be permitted only if the following conditions are met:**

1. it exhibits an overriding public benefit or is of national or state interest;
2. it will not promote additional development in ocean hazard AECs;
3. it will not damage natural buffers to erosion, wave wash, and flooding or otherwise increase existing hazards; and
4. it is designed to avoid or withstand damage from flooding and erosion.

### EXCEPTIONS

The following types of development may be permitted between the oceanfront setback line and the vegetation line if they involve no alteration or removal of primary dunes, frontal dunes, and dune vegetation; if they have overwalks to protect existing dunes; and if they meet all other standards for ocean hazard AECs:

- campgrounds that do not involve substantial permanent structures;
- parking areas with clay, packed sand, or similar surfaces;
- outdoor tennis courts;
- beach access structures;
- elevated decks not exceeding 500 square feet of floor area;
- uninhabitable storage sheds and unenclosed, uninhabitable gazebos with a floor area not exceeding 200 square feet;
- temporary amusement stands; and
- swimming pools.

Where application of the oceanfront setback requirement would preclude the development of permanent structures on lots which existed as of June 1, 1979, single family homes may be permitted seaward of the setback line in ocean erodible areas if they meet all of the following conditions:

- the structure is set back as far as possible from the ocean, with minimal encroachment into the setback area;
- it is at least 60 feet landward of the vegetation line;
- it is entirely behind the landward toe of the frontal dune;
- all pilings used to support the structure penetrate down to at least four feet below mean sea level (see Figure 34);

- the lowest habitable floor of the structure covers no more than 1,000 square feet or 10 percent of the lot area, whichever is greater; and
- the project meets all other state and local requirements.

If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for this system (from the local board of health or N.C. Department of Human Resources) must be submitted with the CAMA permit application.

**THESE EXCEPTIONS DO NOT APPLY TO INLET HAZARD AREAS.**

## Specific Standards

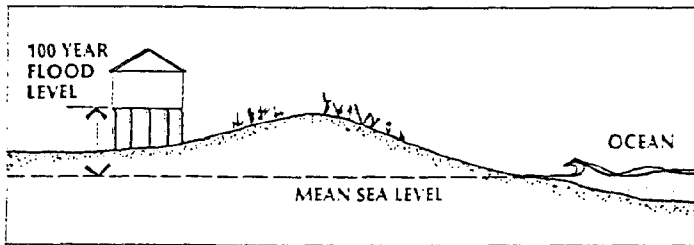


Figure 32. Houses must be elevated to or above the 100 year flood level. The DCM field consultant or local permit officer can provide these specifications.

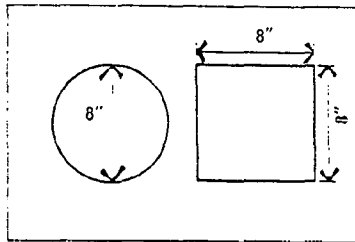


Figure 33. Minimum dimensions for pilings allowable on oceanfront construction.

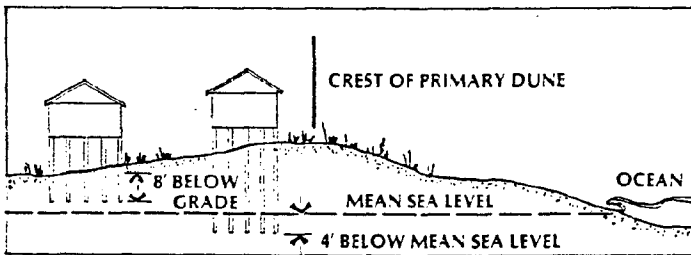


Figure 34. Piling depth necessary for building on and behind a primary dune.

### OCEANFRONT CONSTRUCTION

Erosion is the rule rather than the exception on North Carolina's barrier islands: over a period of months or years, the beach and dunes retreat further and further back until oceanfront buildings are threatened. Severe erosion can also occur overnight as a result of storm tides, waves, and wind.

Building a home or business along North Carolina's oceanfront allows people to fully enjoy the state's beaches, surf, and sun. These are the very resources which draw people to the coast. However, the shoreline is a dynamic environment that presents a variety of hazards to oceanfront development.

Northeasters, hurricanes, and other major storms frequently strike the coast. Their heavy waves, erosion, flooding, and high winds can drastically change the shape of the beach, threaten human lives, and cause millions of dollars of property damage in oceanfront communities. Therefore, in order to avoid disaster while getting the most enjoyment from the beaches, development must recognize the oceanfront's hazards and be located and designed to accommodate them.

To avoid unreasonable danger to life and property, new construction and substantial improvements to existing structures (an increase of 50 percent or more in value or square footage) must meet specific standards in addition to the general use standards for ocean hazard AECs. These standards (which are officially stated in Title 15, Subchapter 7H, Section .0308(d) of the N.C. Administrative Code) are as follows.



- Any building constructed within an ocean hazard area must comply with Appendix D, "Windstorm Resistant Construction" of the N.C. Residential Building Code. When any provisions of that appendix are inconsistent with the AEC standards, the more restrictive provisions shall control.

The local building inspector can explain what is required by the State Building Code. Appendix D presents "design wind speeds" and construction methods that help guard a building against wind damage during a storm.

- All development must be designed and located to minimize damage due to wave action and ground level fluctuations in a "100-year" storm. All foundations must be designed to be stable in a 100-year storm. Cantilevered decks and walkways shall meet this standard or be designed to break away without damaging the main building.
- The bottom of the foundation (excluding pilings and footings) must be elevated to or above the 100-year flood level (see Figure 32).
- All structures shall be on pilings that are no less than eight inches in diameter (if round) or eight inches to a side (if square) (see Figure 33).
- The tips of all pilings must penetrate to at least eight feet below the lowest ground elevation under the structure. For structures on or in front of the primary dune, the pilings must extend to four feet below mean sea level (see Figure 34).

Driving pilings more deeply increases their

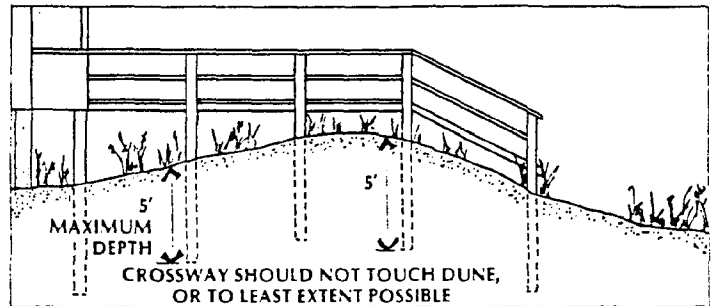


Figure 35. Maximum piling depth for accessways.

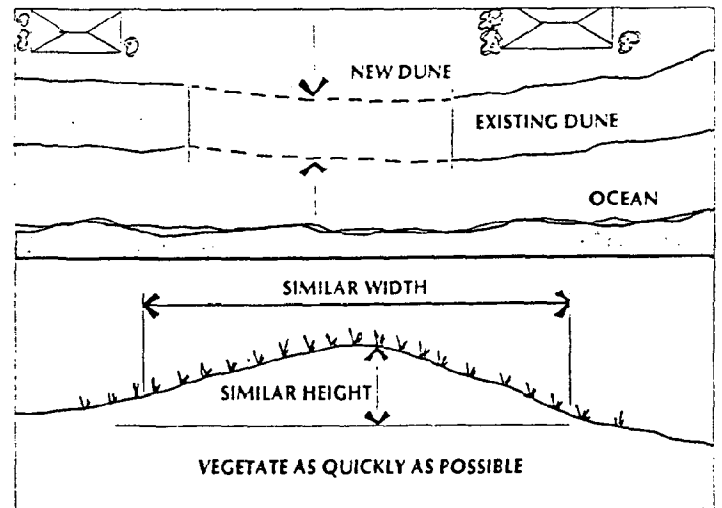


Figure 36. Requirements for creating new dunes.

ability to withstand serious storm-induced erosion of the ground beneath the building. Once erosion totally exposes the pilings, the building will collapse from the lack of support.

- All pilings must be treated to resist decay, insects, and corrosion.
- All walls below the 100-year flood level must be designed and built to meet ALL of the following conditions:
  1. to allow storm waters to rise and flow freely under the building;
  2. to collapse under stress without jeopardizing the building's structural support;
  3. to not become waterborne debris themselves; and
  4. to not cause waterborne debris to accumulate.
- All exposed structural connections must be adequately rustproofed or enclosed.
- All utility systems (such as heating, air conditioning, and electrical boxes) must be located and built to avoid or reduce storm damage.
- No impermeable surfaces (such as asphalt or concrete) shall be placed over any functional part of a complete septic tank system.

#### STRUCTURAL ACCESSWAYS

People who own oceanfront property often build wooden walks from their house or business out to the beach. These "structural accessways" make it easier to get to and from the beach. They also provide a well-defined

pathway that keeps people from cutting trails through dunes, and weakening the dunes' ability to buffer erosion and protect oceanfront buildings.

To ensure that the dune system is not damaged when building a structural accessway, specific standards — in addition to the general use standards for ocean hazard AECs — must be met. These standards (which are officially stated in Title 15, Subchapter 7H, Section .0308(c) of the N.C. Administrative Code) are described here.

- **A structural accessway will be permitted across a dune as long as it entails negligible alteration of the dune. No accessway shall diminish the dune's capacity as a barrier to flooding and erosion.**

Primary and frontal dunes help protect structures behind them from erosion, flooding, and storm waves. They also play a vital role in maintaining the structure of North Carolina's barrier islands and beaches. The dense root networks of the vegetation that grows on dunes help trap and anchor the sand. The alteration of frontal and primary dunes — and the vegetation on them — can disrupt natural beach renourishment patterns, destabilize the entire barrier island system, and increase the risk of damage to human structures from erosion, flooding, and waves.

- **The accessway must be exclusively for pedestrian use.**
- **The accessway must be less than six feet wide.**

- **The accessway must be raised on pilings embedded to a depth of five feet or less so that only the pilings touch the frontal dune. Where this is not possible, the accessway may touch the dune only to the extent necessary (see Figure 35).**

Elevating the accessway allows the dune to adjust naturally to wind and wave forces and thus maintain the stability of the protective dune system.

- **An accessway larger than six feet wide and used for anything other than pedestrians will be permitted only if it is elevated above the dune and serves a public need which cannot be met otherwise. This rule does not apply to public fishing piers as long as they meet all other standards.**

- **Any vegetated areas that are disturbed in the construction and use of the accessway must be revegetated as quickly as possible.**

The stems and roots of beach grasses and other plants hold sand in place and thus help stabilize the dune system.

#### EXEMPTION

The Coastal Resources Commission does not require a **minor development permit** for non-commercial, pedestrian accessways that do not exceed six feet in width. The accessway must be built with *no unnecessary alterations* to the frontal dune. (Driving pilings into the dune is not considered "alteration" in this case.) In no case may the dune be altered to diminish its capacity as a barrier against flooding and erosion. The accessway must conform to all applicable state and local building code standards. *Before beginning any work under this exemp-*

*tion, you must notify the local permit officer or the DCM field consultant about the dimensions of the proposed accessway, its location, and the landowner's name, address, and telephone number. This exemption is officially stated in Title 15, Subchapter 7K, Section .0308 of the N.C. Administrative Code.*

#### OCEANFRONT EROSION PROTECTION MEASURES

Erosion is a fact of life in North Carolina's oceanfront communities. It is a natural geologic process; there is nothing that people can do to stop it. Although there are several erosion responses which may be helpful for short periods, eventually threatened structures will need to be moved to a safer location. In building a structure, it should be placed as far back from the beach as is possible. For existing buildings threatened by erosion, relocation to safer sites or replenishing the beach's supply of sand are the preferred responses. Attempts to permanently stabilize the shoreline, by such measures as bulkheads, seawalls, and sandbags, will cause the loss of the public beach and increase erosion at adjacent properties by interrupting natural sand migration patterns.

To protect private property from erosion while maintaining the public beach, oceanfront erosion protection measures must meet *specific standards in addition to the general use standards for ocean hazard AECs*. These standards (which are officially stated in Title 15, Subchapter 7H, Section .0308(a) of the N.C. Administrative Code) are explained below.

- **Comprehensive shoreline management is preferred over small-scale projects.**

Erosion protection measures are more successful when they are coordinated and carried out over a larger stretch of shoreline, rather than at scattered, individual sites.

- **Building relocation and beach renourishment projects are preferred over other erosion protection measures.**
- **All "structural" erosion protection projects must demonstrate sound engineering practices.**
- **No permit for an erosion protection project will be granted until notice has been given to adjacent property owners and they have signed a notice form, or until a reasonable effort has been made to notify them by registered or certified mail.**
- **When an existing oceanfront structure is imminently threatened by erosion, a property owner may obtain a permit to temporarily protect the structure with low sandbag bulkheads, artificial seaweed, or beach nourishment.**

An "existing, threatened structure" is one where erosion places the structure's foundation in imminent danger of flooding or collapsing. A foundation is normally considered endangered when it is less than 20 feet from the erosion scarp or the seaward toe of the dune. In general, structural accessways, pools, parking lots, tennis courts, and similar structures do not qualify as existing, threatened structures.
- **No shoreline erosion project may be built in an area that provides a habitat for important**

**wildlife species unless adequate steps to protect, restore, or replace that habitat are taken.**

- **Project construction must be timed to cause the least possible damage to biological processes.**

Certain times of year and certain times of day are important and sensitive to the breeding, spawning, nesting, and feeding cycles of shorebirds, sea turtles, and other important species that inhabit the beaches and dunes. Erosion protection projects must accommodate these cycles in order to protect North Carolina's wildlife resources.
- **Beach bulldozing (moving sand from any point seaward of the first line of stable vegetation to create a protective dike or for any other purpose) may be permitted if all the following conditions are met:**
  1. beach material is removed no deeper than one foot below the existing surface elevation;
  2. the movement of material maintains a slope that does not endanger the public or the public's use of the beach;
  3. the project does not go beyond the bounds of the applicant's property without the permission of neighboring property owners;
  4. the project does not increase erosion on neighboring properties;
  5. no material is removed from below the mean low water line;
  6. the project does not damage important natural or cultural resources; and

7. the movement of material protects the threatened structure's foundation or threatened on-site waste disposal systems.

#### EXEMPTION

The Coastal Resources Commission does not require a **minor development permit** for beach bulldozing in **emergency** situations, as long as all the conditions stated above are met. Individuals proposing other activities as emergency maintenance and repairs must first consult with the local permit officer to determine if the action qualifies for exemption. "Emergency maintenance and repairs" include any activity that is a response to a sudden, unexpected event (such as a hurricane or other major storm) which significantly endangers life or property. Property is considered endangered when the structure's foundation is less than 20 feet from the toe of the erosion scarp. The exemption is limited to actions that prevent further danger or to restore the property to its condition prior to the emergency; it does not cover additions or expansions to the property. This exemption is officially stated in Title 15, Subchapter 7K, Sections .1010(5) and .0305 of the N.C. Administrative Code.

#### DUNE ESTABLISHMENT AND STABILIZATION

Sand dunes provide a natural buffer against the erosive forces of the wind, water, and waves. It is sometimes necessary to stabilize or strengthen existing sand dunes, and even build new ones, as a defense against storm damage and to protect oceanfront buildings and roads. As with other types of development in ocean hazard AECs, dune establishment and stabiliza-

tion projects must be thoughtfully planned and carried out to avoid damaging the beach and dune system.

In order to obtain a CAMA permit, dune establishment and stabilization projects must meet the specific standards in addition to the general use standards for all development in ocean hazard AECs. These standards (which are officially stated in Title 15, Subchapter 7H, Section .0308(b) of the N.C. Administrative Code) are listed below.

- **No disturbance of dunes will be permitted when alternative construction methods or sites can be used for the project.**
- **Existing primary and frontal dunes must not be broadened or extended toward the ocean, except for beach renourishment or emergency maintenance.**
- **No new dunes may be created in inlet hazard areas.**
- **Any new dunes must be aligned with and of the same general configuration as existing neighboring dune ridges (see Figure 36).**
- **Sand needed to strengthen existing dunes, or to establish new dunes, must be brought in from outside the ocean hazard area and must be similar to the sand already on the property.**

Taking sand from one part of the ocean hazard area to strengthen the dunes or beach at another part of the AEC is the same as "robbing Peter to pay Paul" — it decreases the AEC's supply of sand that helps buffer the forces of storms and ero-

sion. If the sand brought onto the project site does not have a grain size and shape similar to the sand that is already there, then the new sand will not interlock with the existing sand to build stable dunes.

- If the work will help protect a proposed structure, sand from any dune on the site other than the frontal and primary dunes may be moved to strengthen existing frontal and primary dunes.
- Sand must be added to dunes in a manner causing the least possible damage to the existing vegetation. Any filled areas must be immediately replanted or temporarily stabilized until replanting is completed.
  - The stems and roots of beach grasses and other plants hold sand in place and thus help stabilize the dune system.

#### INLET HAZARD AREAS

Of the three ocean hazard AECs, inlet hazard areas pose the greatest dangers to life and property. North Carolina's numerous ocean inlets are constantly migrating — sometimes widening and sometimes filling in. They are famous for their unpredictability. New inlets are created by major storms as inland floodwaters "blow out" a low or narrow section of a barrier island so they can drain into the ocean. As the "pressure valve" for storm floodwaters entering and leaving the state's sounds and tidal rivers, inlets and the lands flanking them are subject to severe erosion, flooding, and wave wash during and after major storms. These hazards call for even stricter guidelines for development in inlet hazard areas to protect human lives and property.

In order to obtain a CAMA permit, development in inlet hazard areas must meet specific standards in addition to the general use standards for all development in ocean hazard AECs. These standards (which are officially stated in Title 15, Subchapter 7H, Section .0310 of the N.C. Administrative Code) are described below.

- Only residential buildings of four units or less, and non-residential structures of less than 5,000 square feet total floor area are allowed within the inlet hazard area.
- All development must be set back from the first line of stable natural vegetation a distance equal to the setback required in the neighboring ocean erodible area.
- On lots created or subdivided after July 23, 1981, permanent structures will be allowed at a density of no more than one unit per 15,000 square feet of land area.
  - Mud flats, salt marshes, and beach areas seaward of the vegetation line are not included in computing a lot's land area or density.
- Traditional accessways to the beach that have been subject to longstanding, open, and continuous public use must not be eliminated or otherwise restricted.
- Shoreline stabilization structures are allowed only as part of a publicly supported project.

**APPENDIX J**

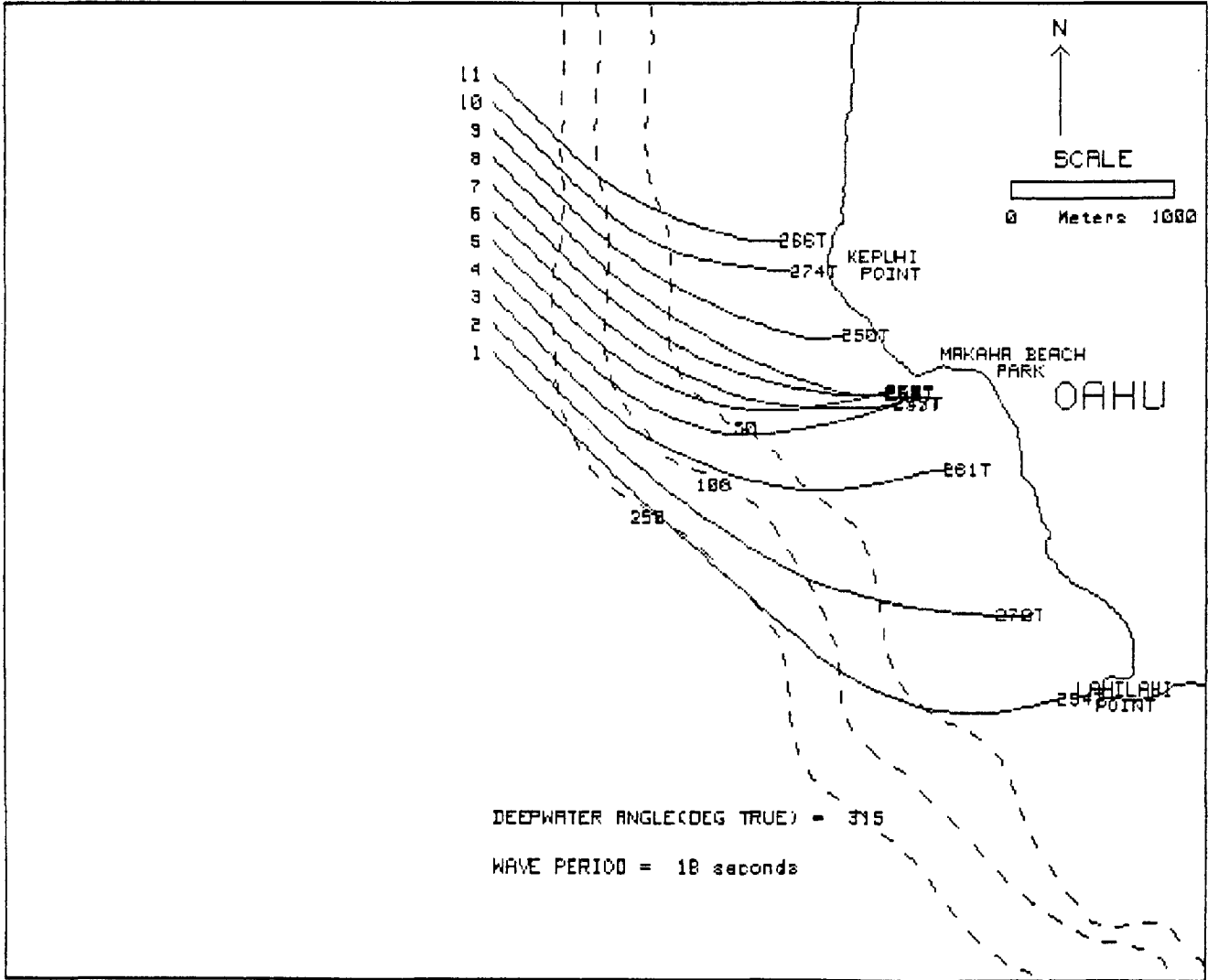
**WAVE REFRACTION ANALYSIS RESULTS**

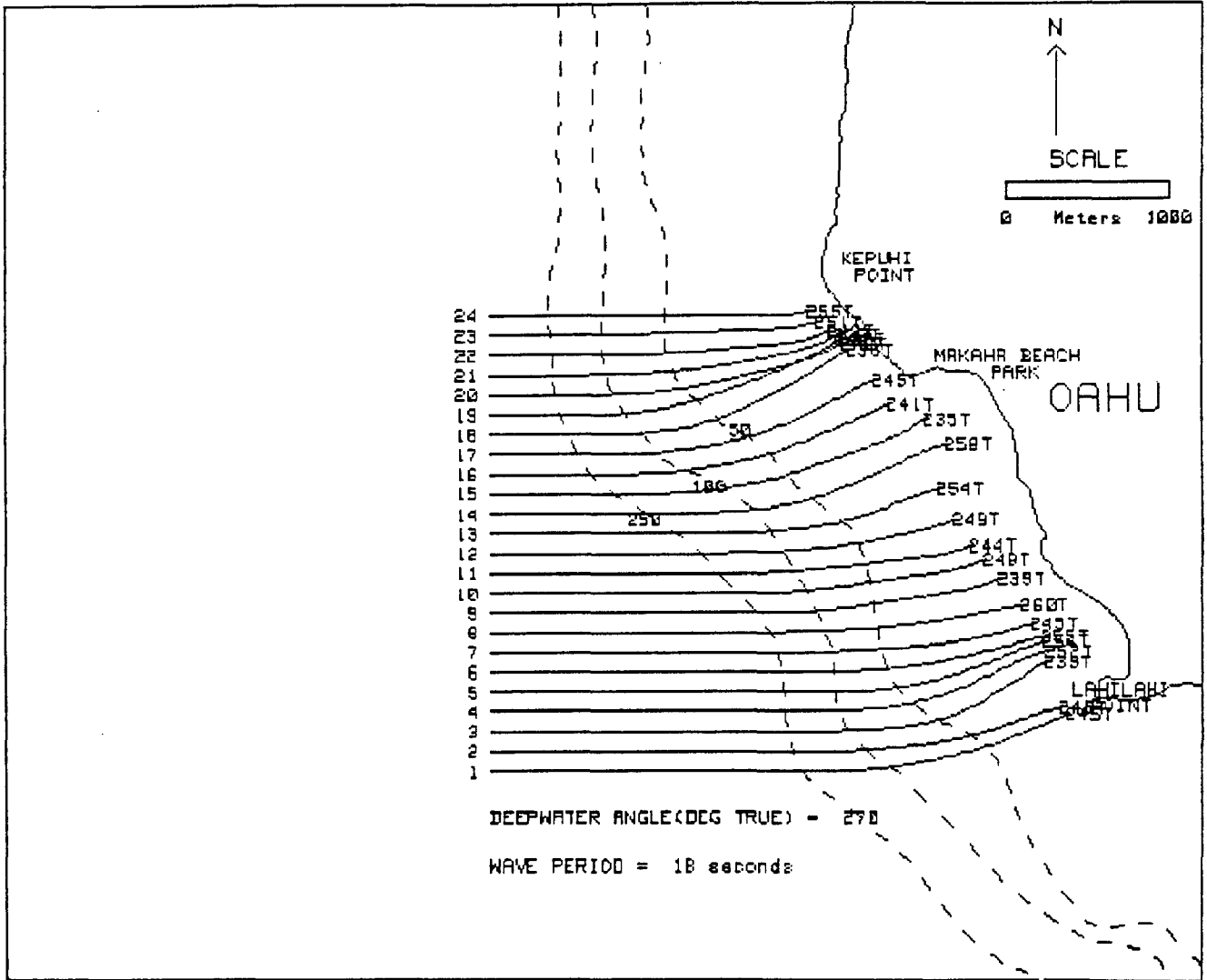
**WAVE REFRACTION ANALYSIS**  
**CASE STUDY SITE #1 - MAKAHA, OAHU**

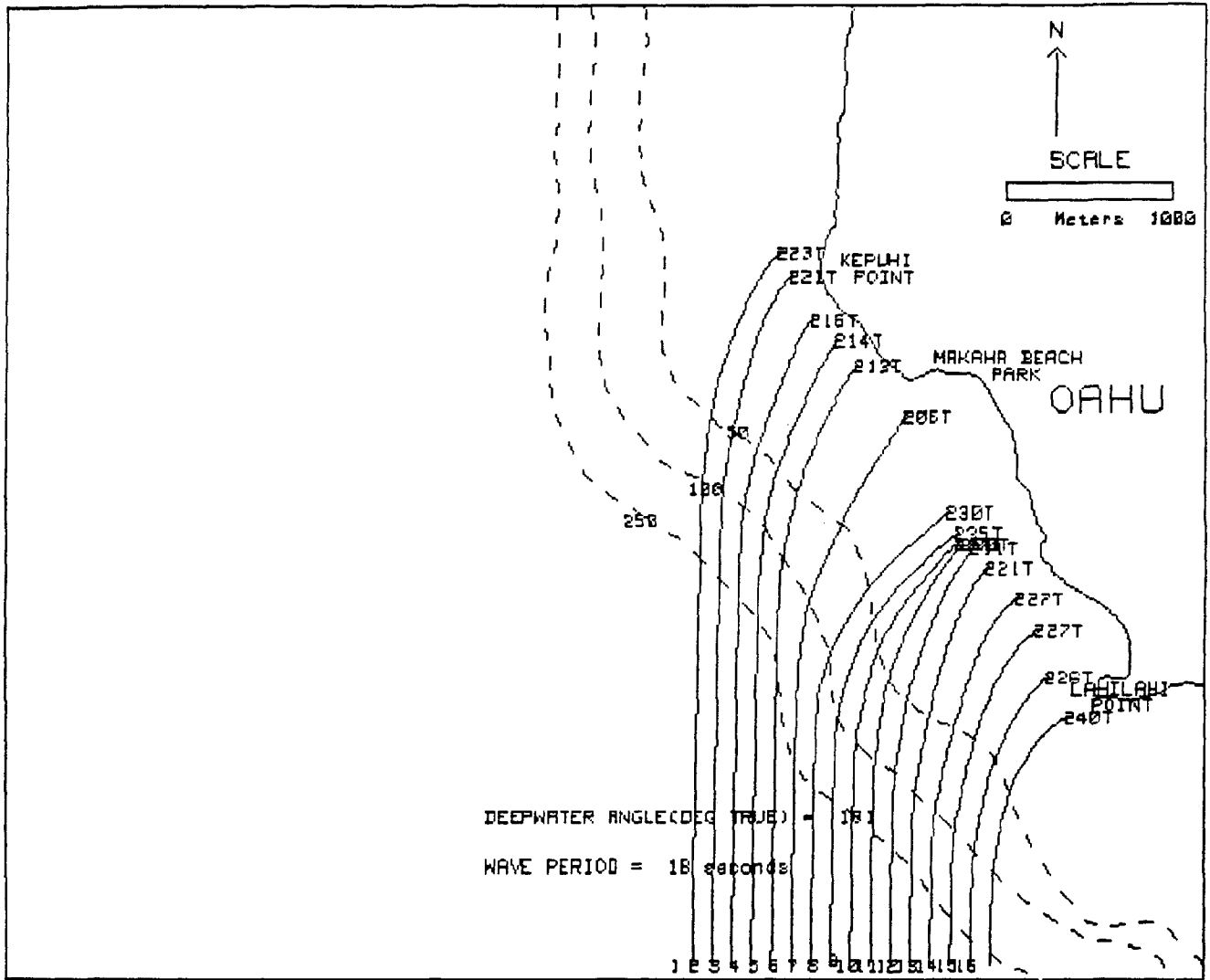


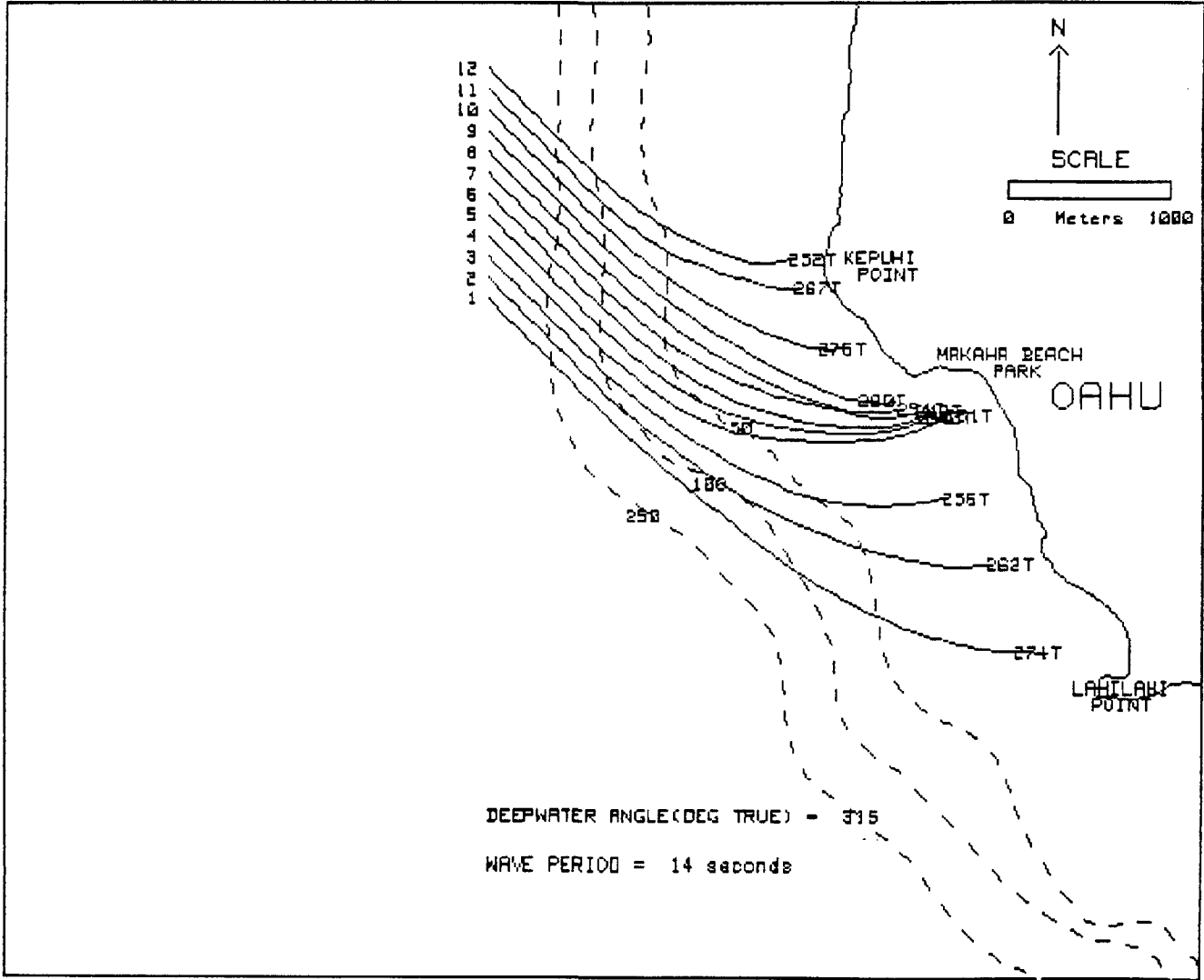
TABLE 1- REFRACTION DATA FOR MAKAHA SITE

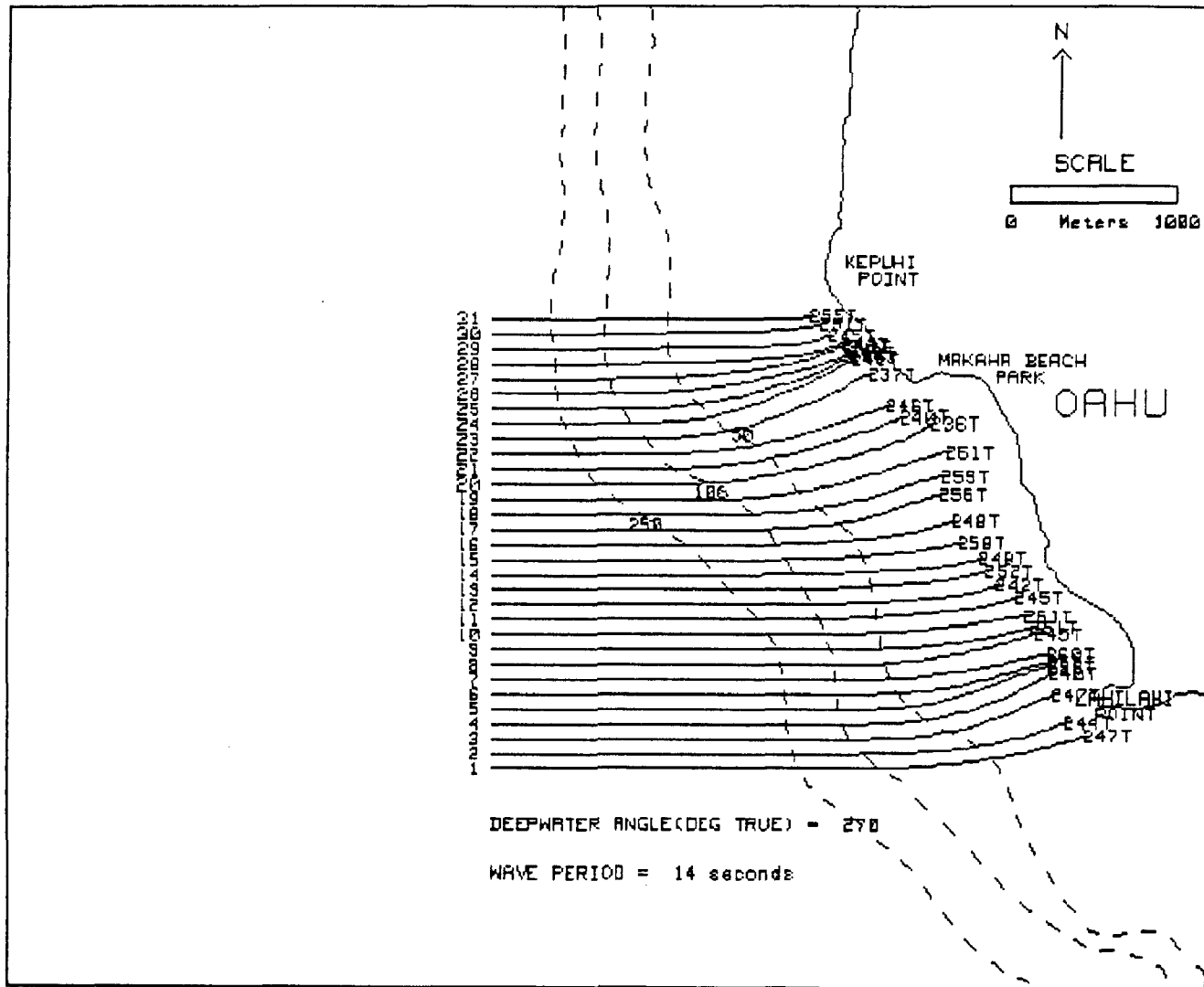
<u>WAVE APPROACH</u>	<u>WAVE PERIOD</u>	<u>RAY #</u>	<u>Ks</u>	<u>Kr</u>	<u>H/Ho</u>
NW	18	1	1.353	0.453	0.613
NW	18	4	1.399	0.978	1.368
NW	18	6	1.392	1.117	1.554
NW	18	8	1.454	0.740	1.075
NW	18	10	1.282	0.560	0.718
W	18	4	1.360	0.890	1.210
W	18	10	1.378	1.023	1.410
W	18	15	1.582	0.550	0.870
W	18	20	1.363	1.386	1.889
W	18	24	1.464	0.969	1.418
S	18	4	1.455	0.631	0.918
S	18	7	1.362	0.867	1.181
S	18	9	1.334	1.737	2.317
S	18	13	1.363	1.266	1.725
S	18	15	1.482	0.565	0.837
NW	14	3	1.120	0.434	0.486
NW	14	5	1.279	1.021	1.306
NW	14	7	1.183	1.509	1.785
NW	14	10	1.023	0.486	0.497
NW	14	12	1.328	0.812	1.078
W	14	5	1.206	1.028	1.239
W	14	10	1.248	0.822	1.026
W	14	15	1.210	0.822	0.995
W	14	20	1.276	1.052	1.342
W	14	24	1.209	2.548	3.080
S	14	3	1.307	0.736	0.962
S	14	7	1.118	0.499	0.558
S	14	10	1.227	1.131	1.388
S	14	13	1.219	2.288	2.789
S	14	16	1.256	0.664	0.834
NW	10	2	1.078	0.471	0.507
NW	10	4	1.077	1.198	1.290
NW	10	6	1.067	0.997	1.064
NW	10	8	1.144	0.402	0.460
NW	10	10	1.087	0.661	0.718
W	10	5	1.062	0.912	0.968
W	10	10	1.083	0.804	0.871
W	10	15	1.073	0.974	1.045
W	10	20	1.105	0.738	0.815
W	10	25	1.078	0.859	0.926
S	10	1	1.072	1.185	1.270
S	10	5	1.087	0.956	1.039
S	10	10	1.074	1.074	1.153
S	10	15	1.084	1.334	1.446
S	10	19	1.080	1.155	1.247

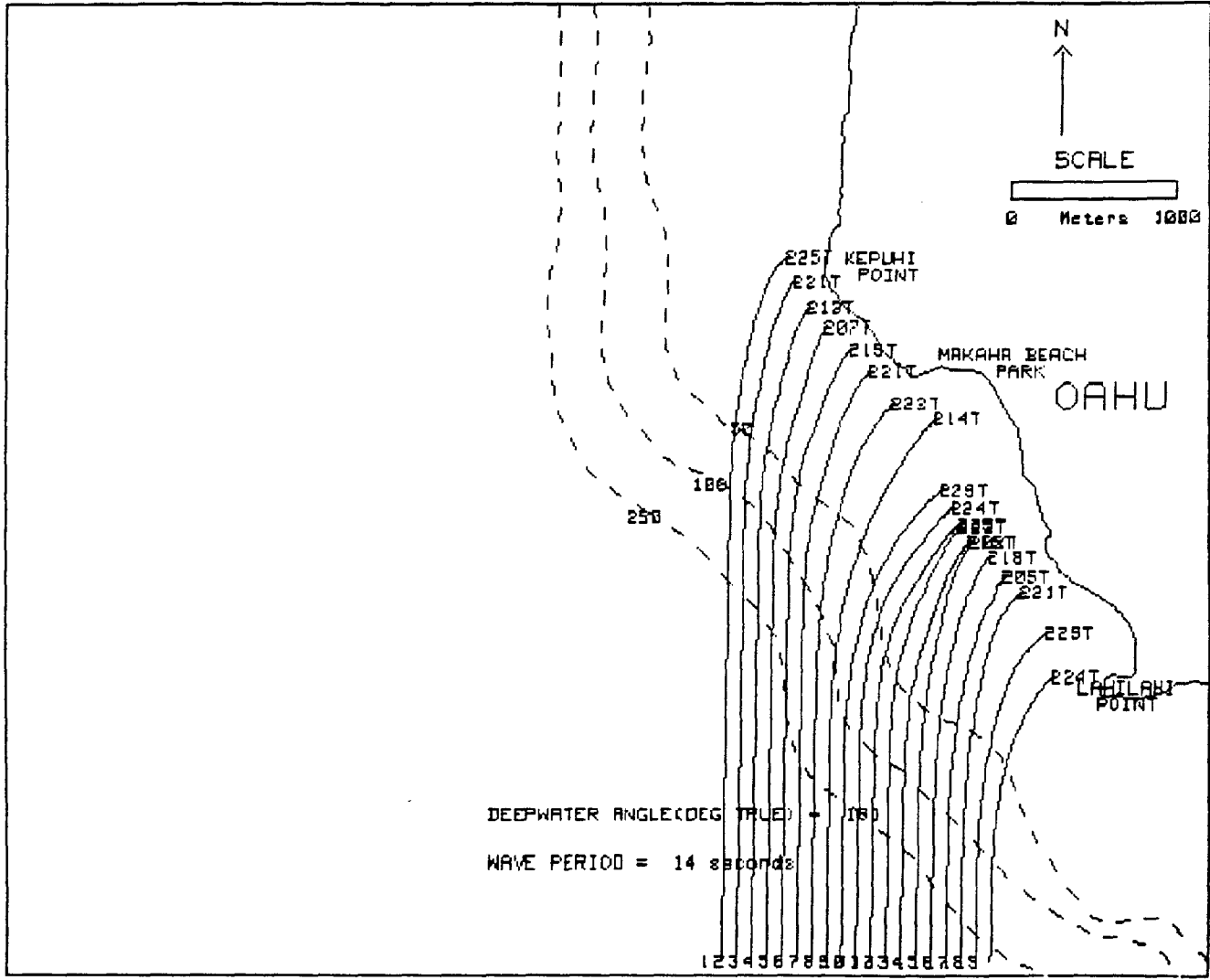


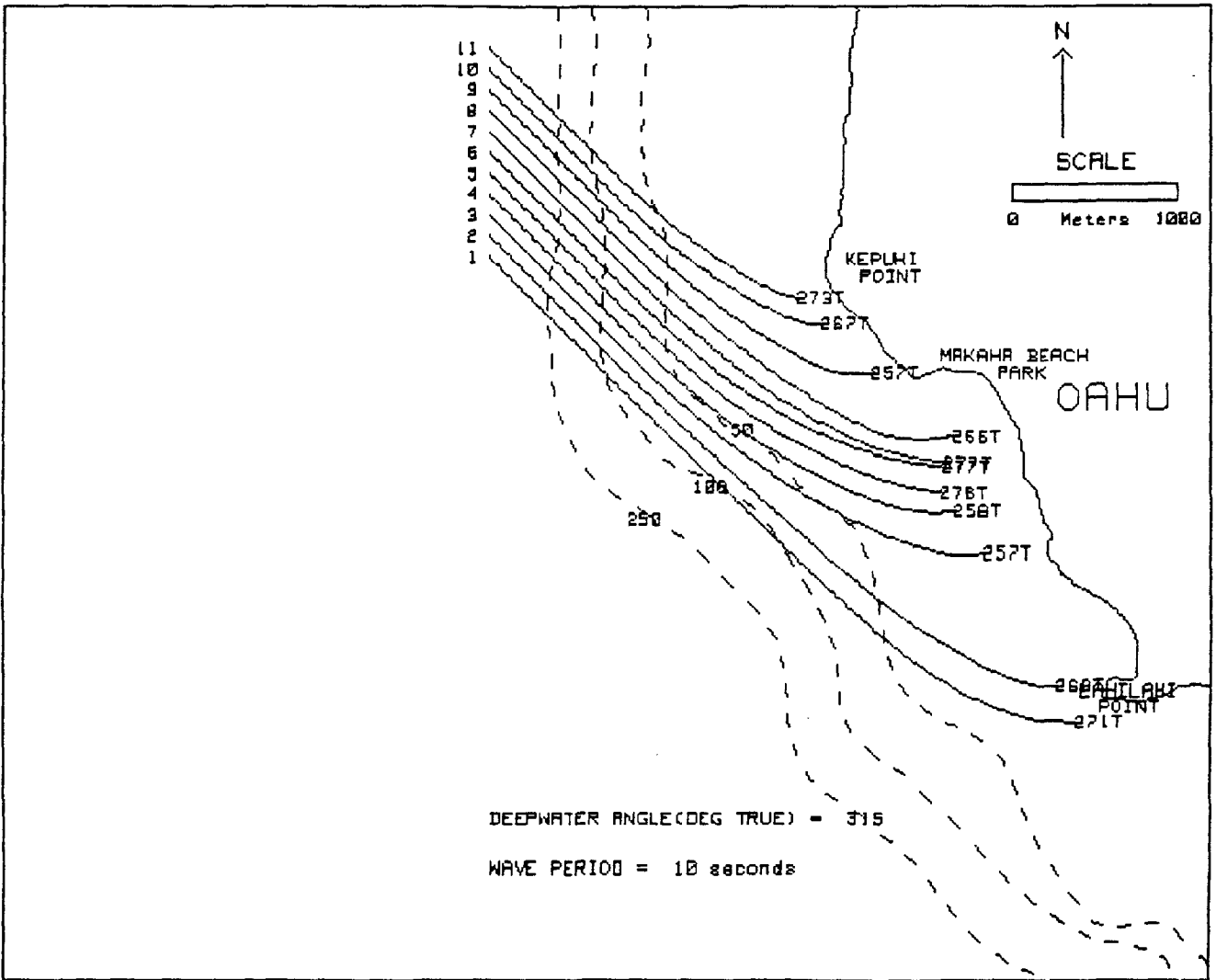




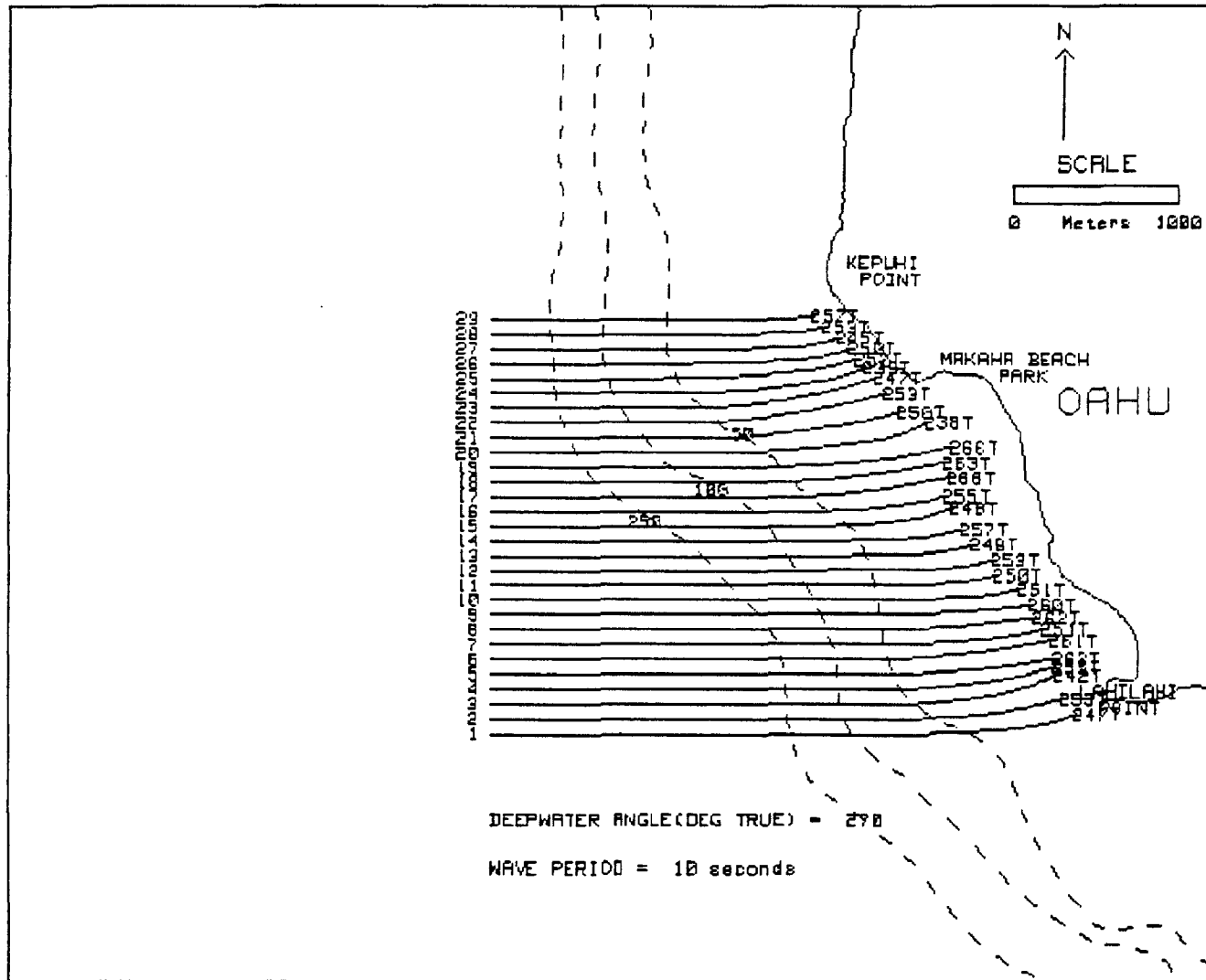


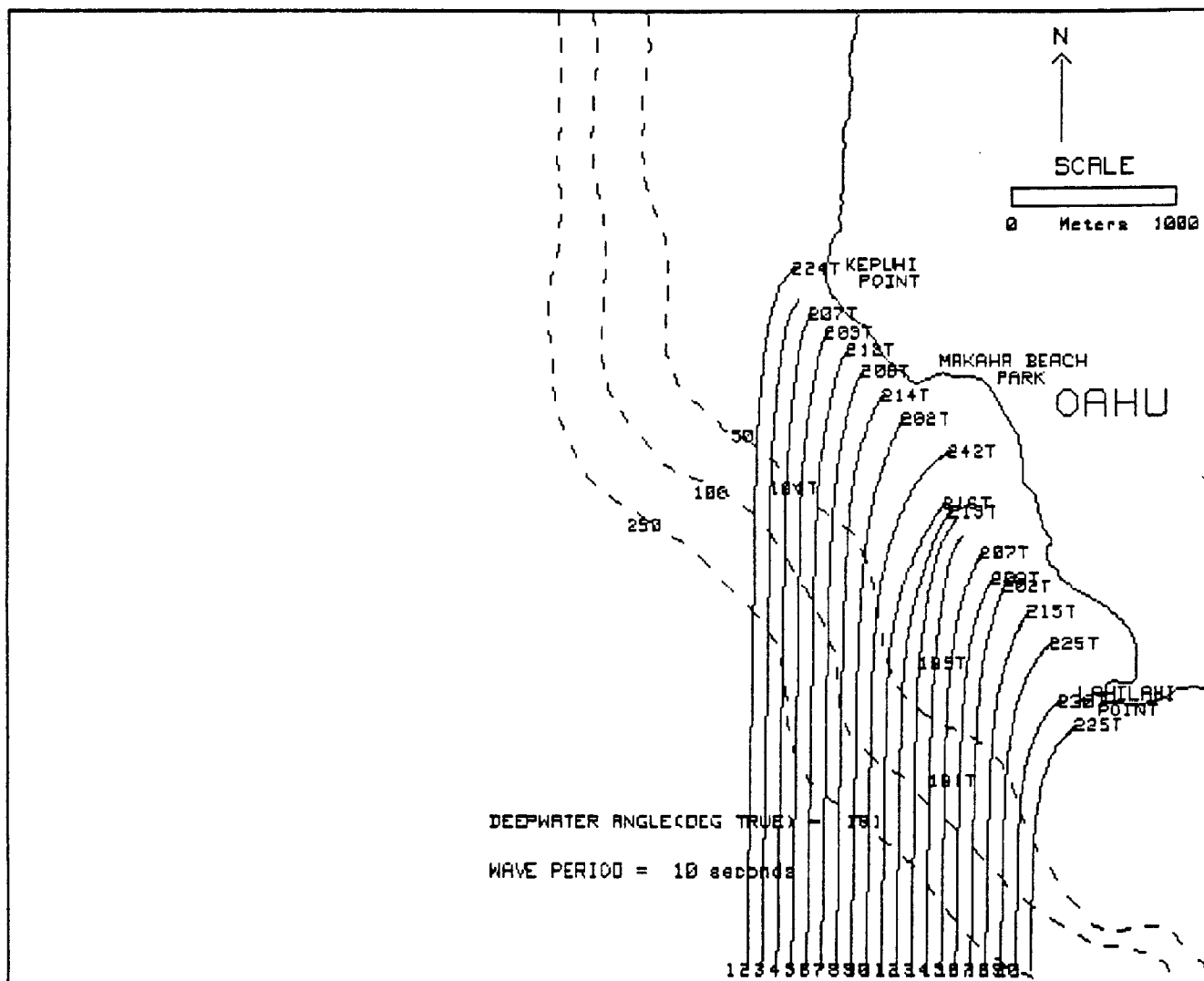








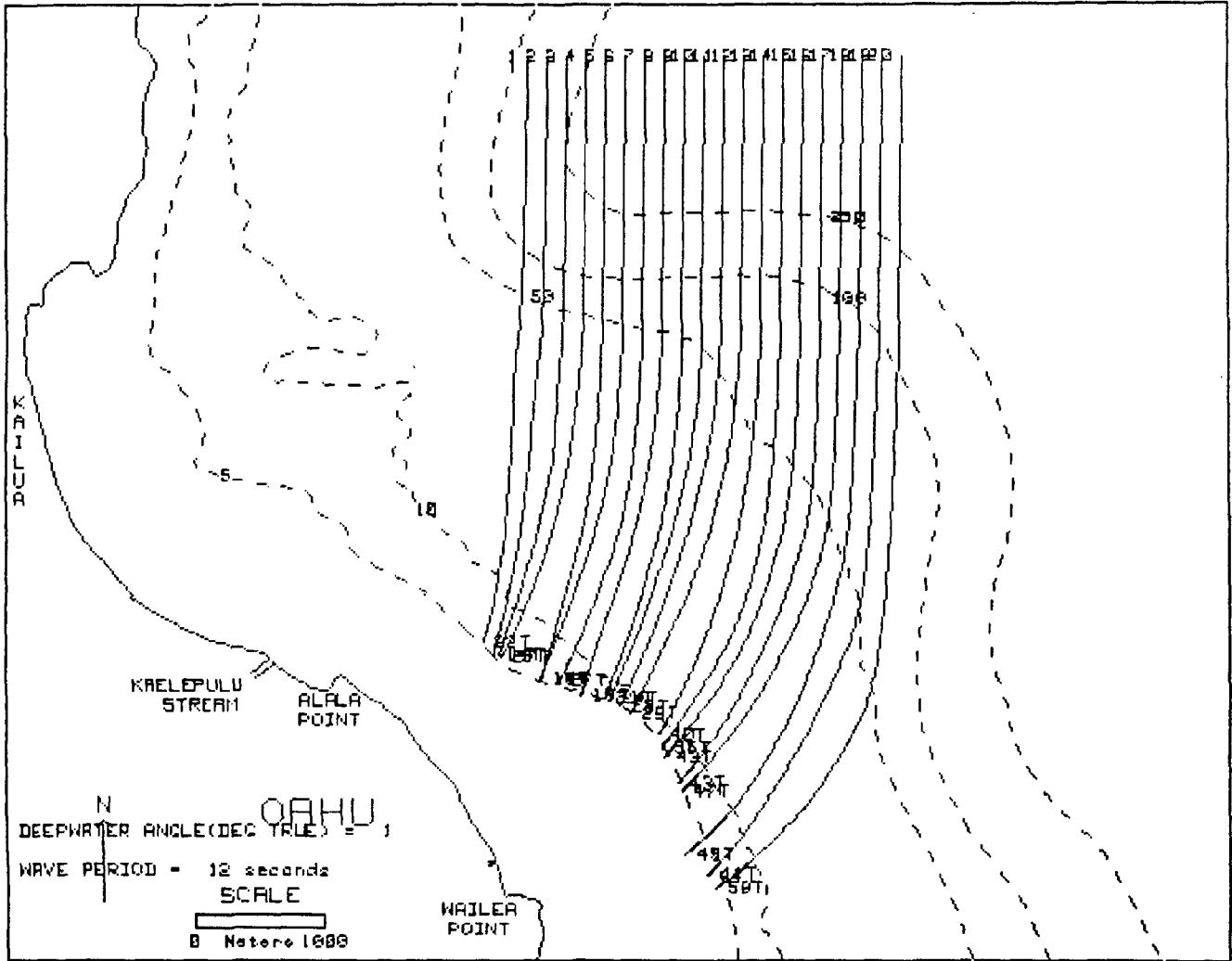


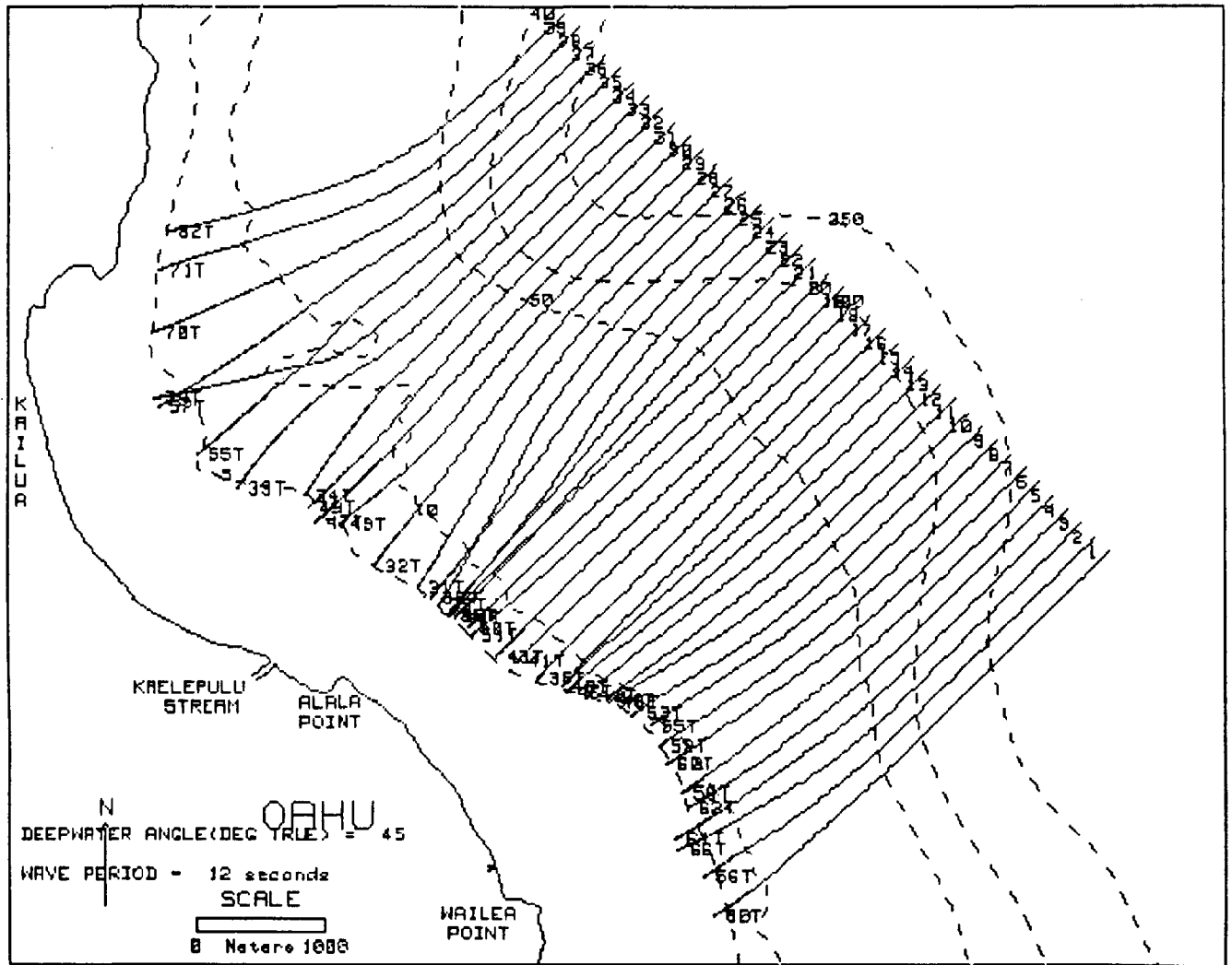


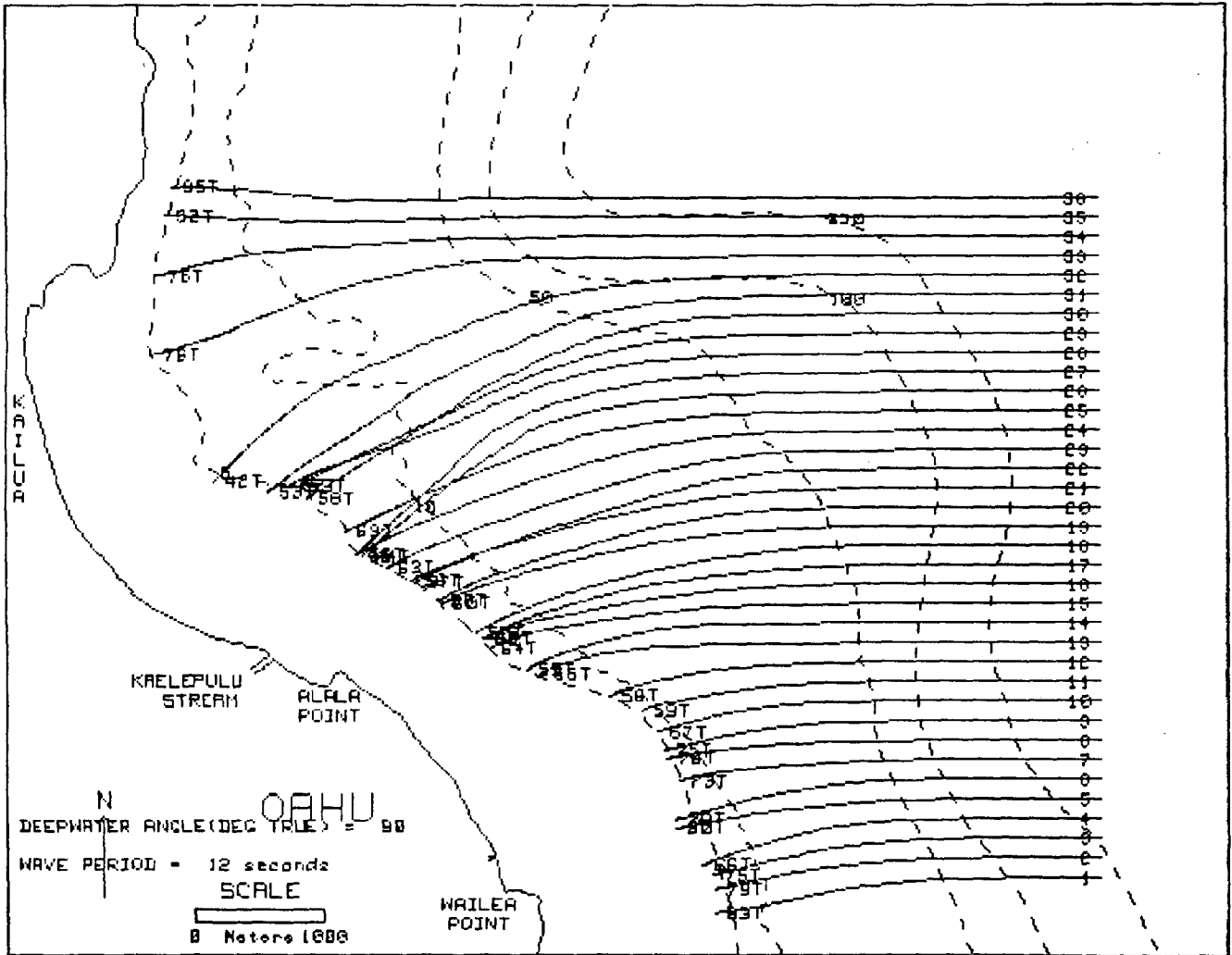
**WAVE REFRACTION ANALYSIS**  
**CASE STUDY SITE #2 - KAILUA-LANIKAI, OAHU**

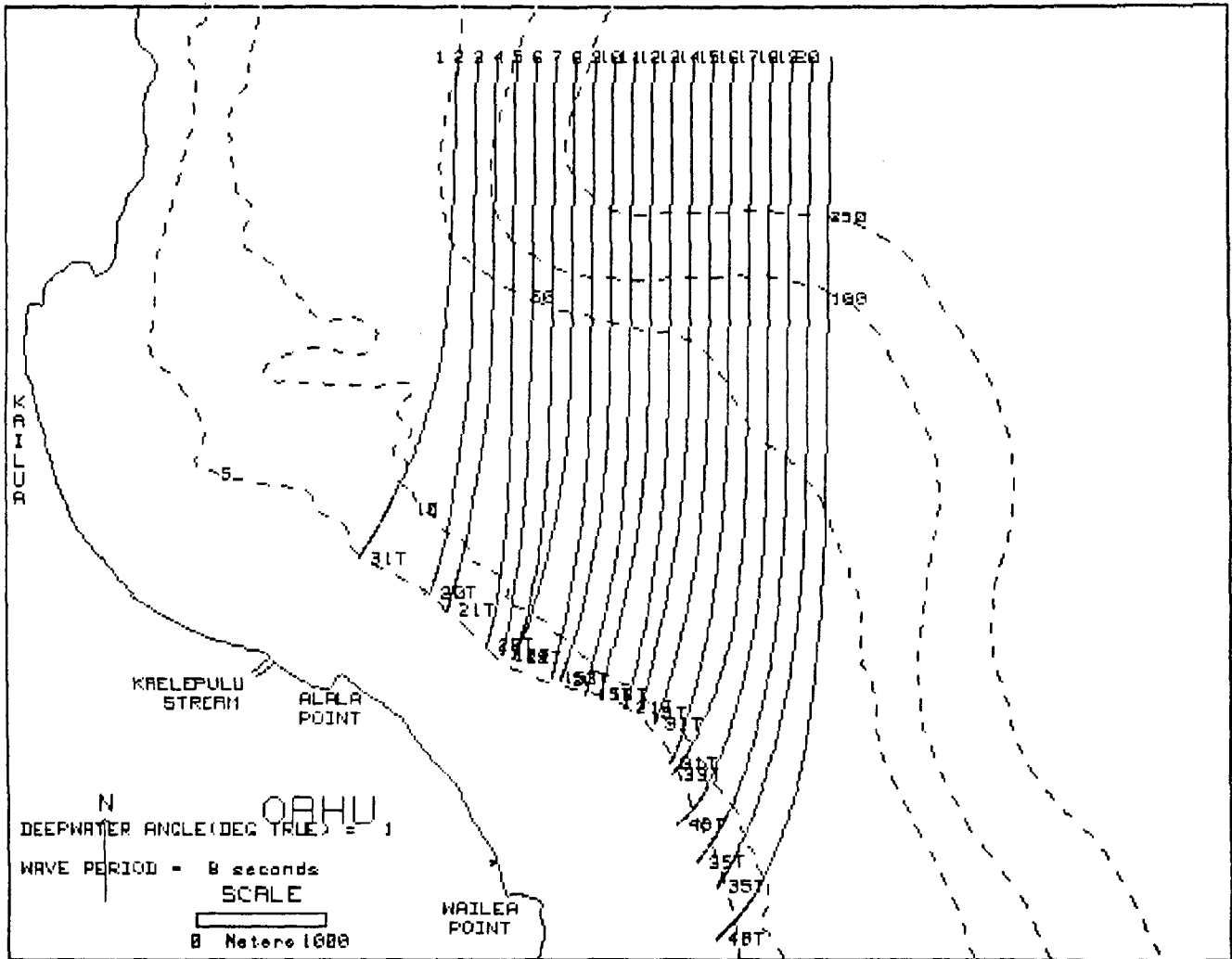
TABLE 2- REFRACTION DATA FOR KAILUA-LANIKAI SITE

<u>WAVE APPROACH</u>	<u>WAVE PERIOD</u>	<u>RAY #</u>	<u>Ks</u>	<u>Kr</u>	<u>H/Ho</u>
N	12	1	1.243	1.615	2.007
N	12	4	1.189	0.605	0.719
N	12	8	1.230	1.075	1.322
N	12	12	1.266	0.797	1.009
N	12	16	1.201	1.252	1.503
N	12	20	1.092	0.432	0.472
NE	12	5	1.157	0.913	1.056
NE	12	10	1.150	0.858	0.986
NE	12	15	1.201	2.268	2.724
NE	12	20	1.271	0.781	0.993
NE	12	26	1.203	1.054	1.268
NE	12	31	1.278	1.052	1.344
E	12	5	1.222	1.539	1.881
E	12	10	1.189	0.868	1.032
E	12	15	1.170	0.978	1.144
E	12	20	1.178	0.810	0.954
E	12	25	1.201	1.088	1.307
E	12	30	1.206	0.813	0.980
N	8	1	1.073	0.466	0.500
N	8	5	1.031	1.125	1.160
N	8	9	1.000	0.860	0.860
N	8	12	1.029	0.997	1.026
N	8	15	1.009	1.170	1.180
N	8	18	1.029	0.861	0.886
NE	8	12	1.034	1.022	1.057
NE	8	18	1.036	1.800	1.865
NE	8	24	1.050	0.816	0.857
NE	8	30	1.001	0.736	0.737
NE	8	36	1.024	0.908	0.930
NE	8	42	1.017	0.862	0.877
E	8	1	1.041	0.995	1.036
E	8	7	1.020	0.876	0.893
E	8	13	1.038	0.829	0.860
E	8	18	1.009	0.868	0.876
E	8	22	1.043	1.053	1.098
E	8	24	1.030	0.559	0.575

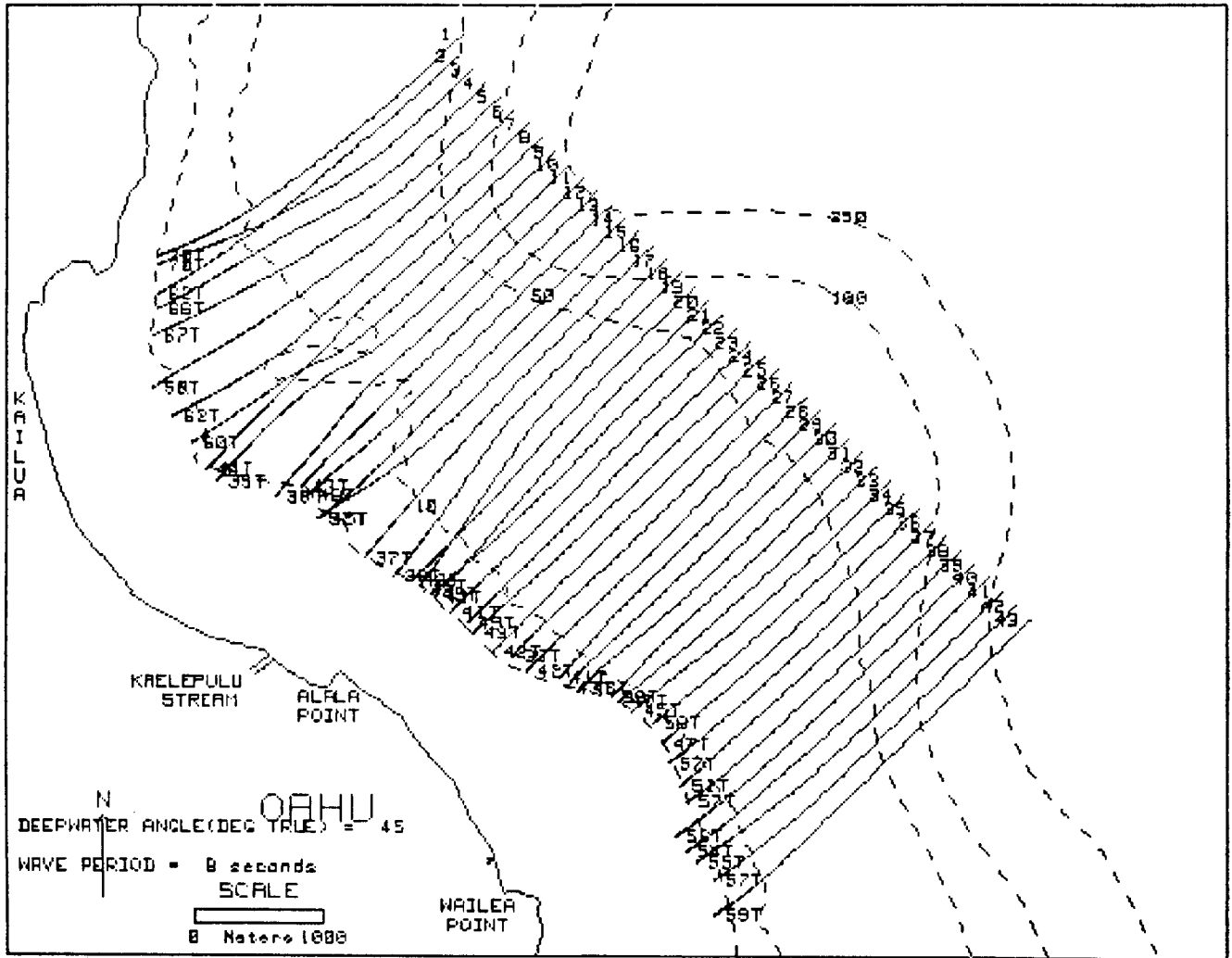


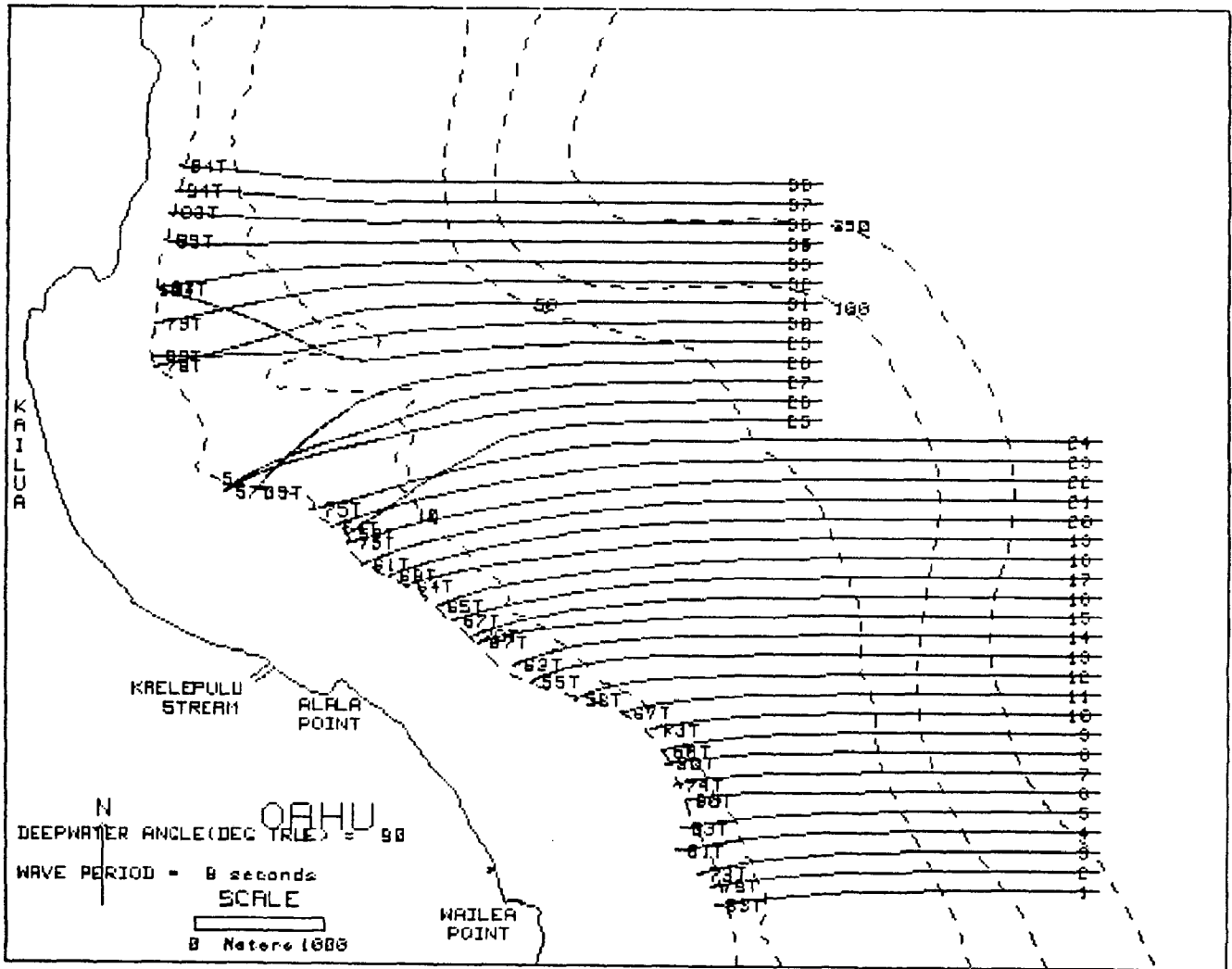










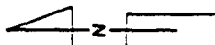


**WAVE REFRACTION ANALYSIS**  
**CASE STUDY SITE #3 - KUKUIULA-POIPU, KAUAI**

FIGURE B-1-2 HURRICANE IWA WAVE REFRACTION AT 1800 HST, 23 NOV. 1982

$T = 14.7$  sec.,  $H_0 = 44.5$  ft.,  $A_0 = 237^\circ$  TN

(From "Hurricane Vulnerability Study for Kauai, Poipu and Vicinity"  
by Sea Engineering Inc. and Charles L. Bretschneider, Jan. 1986)



SCALE: 1" = 3,333'  
0 1 2 3000 ft.

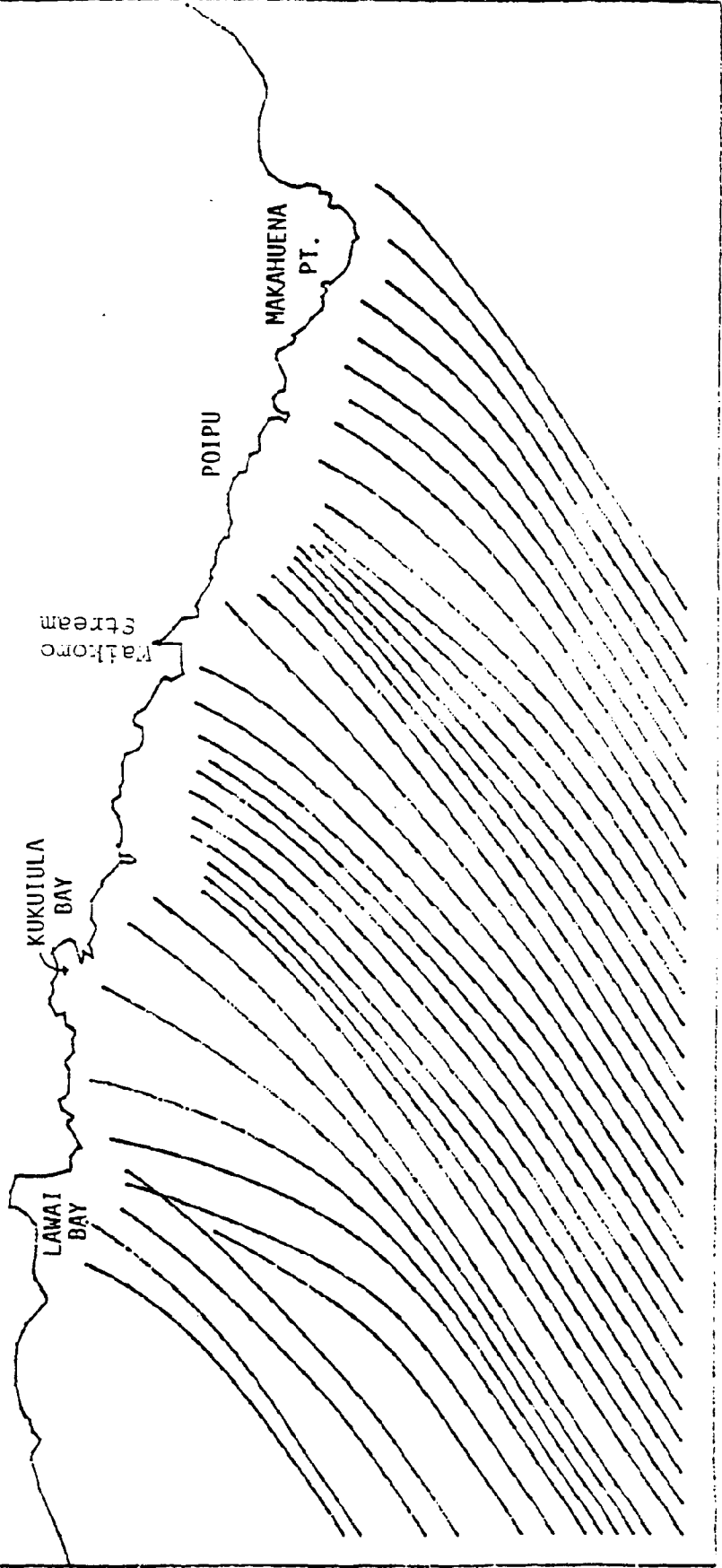


FIGURE B-2-2 SCENARIO HURRICANE 4a: E-SE MODEL WAVE REFRACTION (t = -1.4 hours)  
 $T = 12 \text{ sec.}, H_0 = 29.8 \text{ ft.}, A_0 = 180 \text{ IN}$

(From "Hurricane Vulnerability Study for Kauai, Poipu and Vicinity"  
 by Sea Engineering Inc. and Charles L. Brotschneider, Jan 1986)

SCALE: 1" = 3,333'  
 0 1 2 3000 ft.

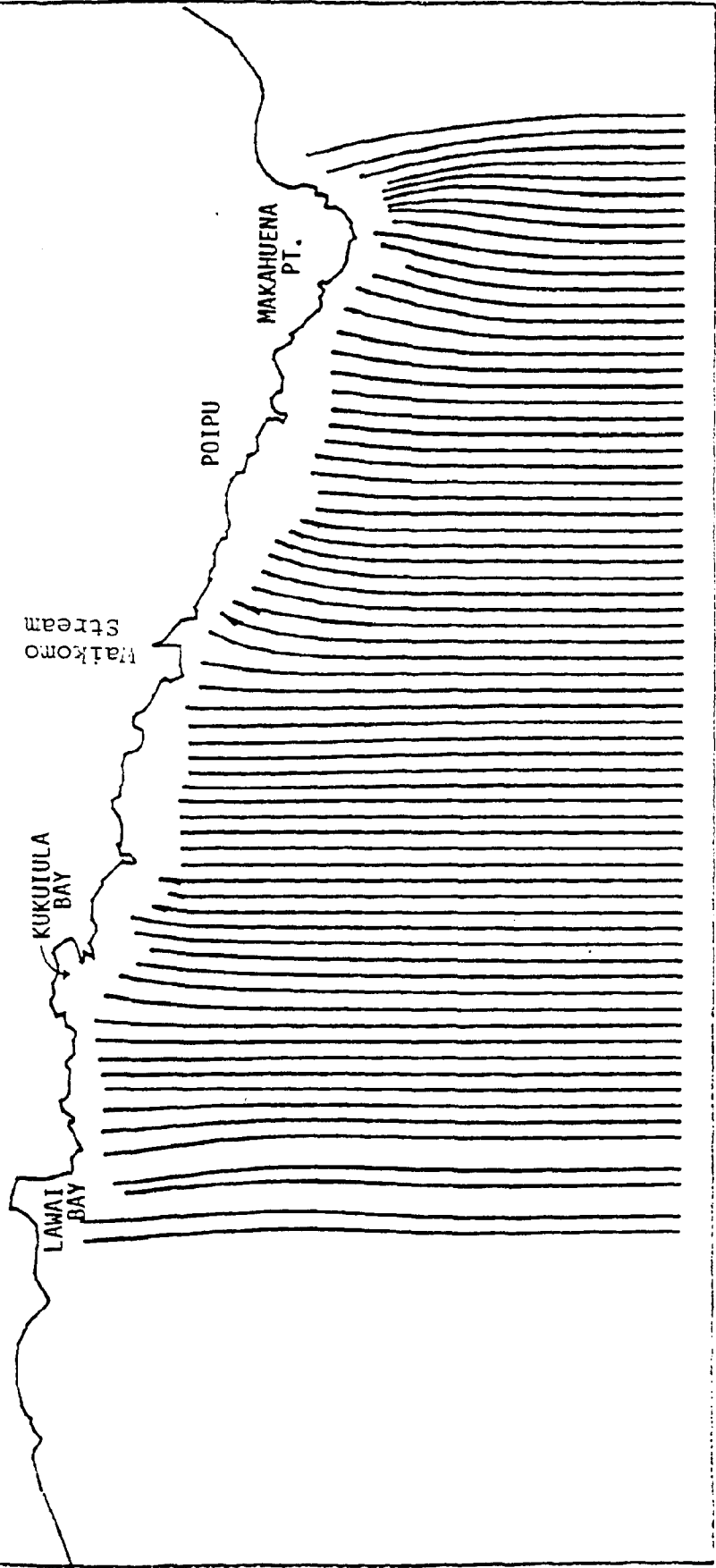
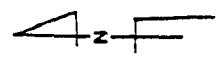
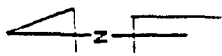


FIGURE B-3-2 SCENARIO HURRICANE 4b: E-SE WORST CASE  
WAVE REFRACTION (t = -1.8 hours)

T = 13.7 sec.,  $H_0 = 39.4$  ft.,  $\Lambda_0 = 180^\circ$ TN

(From "Hurricane Vulnerability Study for Kauai, Poipu and Vicinity"  
by Sea Engineering Inc. and Charles L. Bretschneider, Jan. 1986)



SCALE: 1" = 3,333'  
0 1 2 3000 ft.

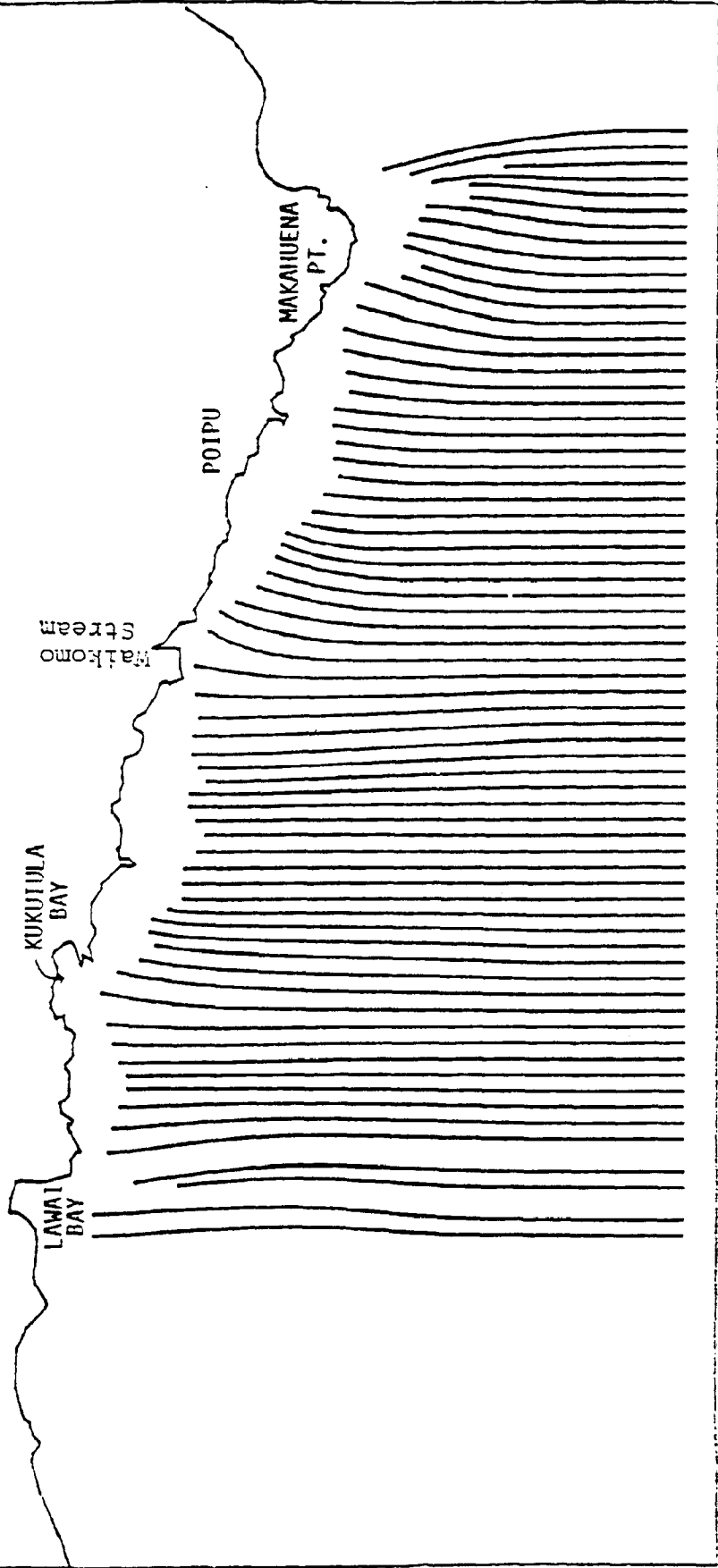
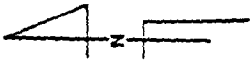


FIGURE B-4-2 SCENARIO HURRICANE 5a: S-SW MODEL WAVE REFRACTION (t = 0 hours)

T = 12.7 sec.,  $H_0 = 33.4$  ft.,  $\Lambda_0 = 185^\circ$  TN

(From "Hurricane Vulnerability Study for Kauai, Poipu and Vicinity"  
by Sea Engineering Inc. and Charles L. Brotschneider, Jan. 1986)



SCALE: 1" = 3,333'  
0 1 2 3000 ft.

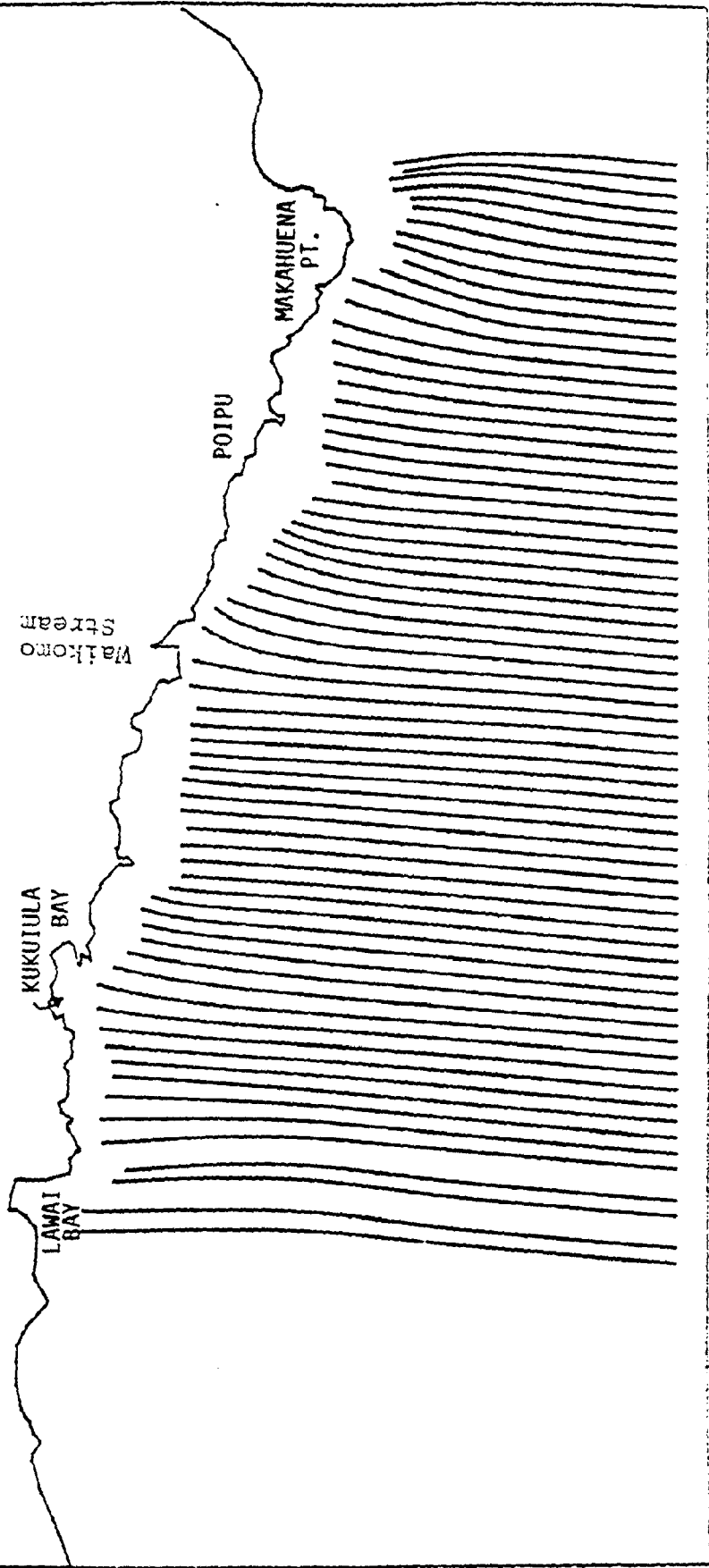
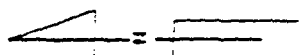


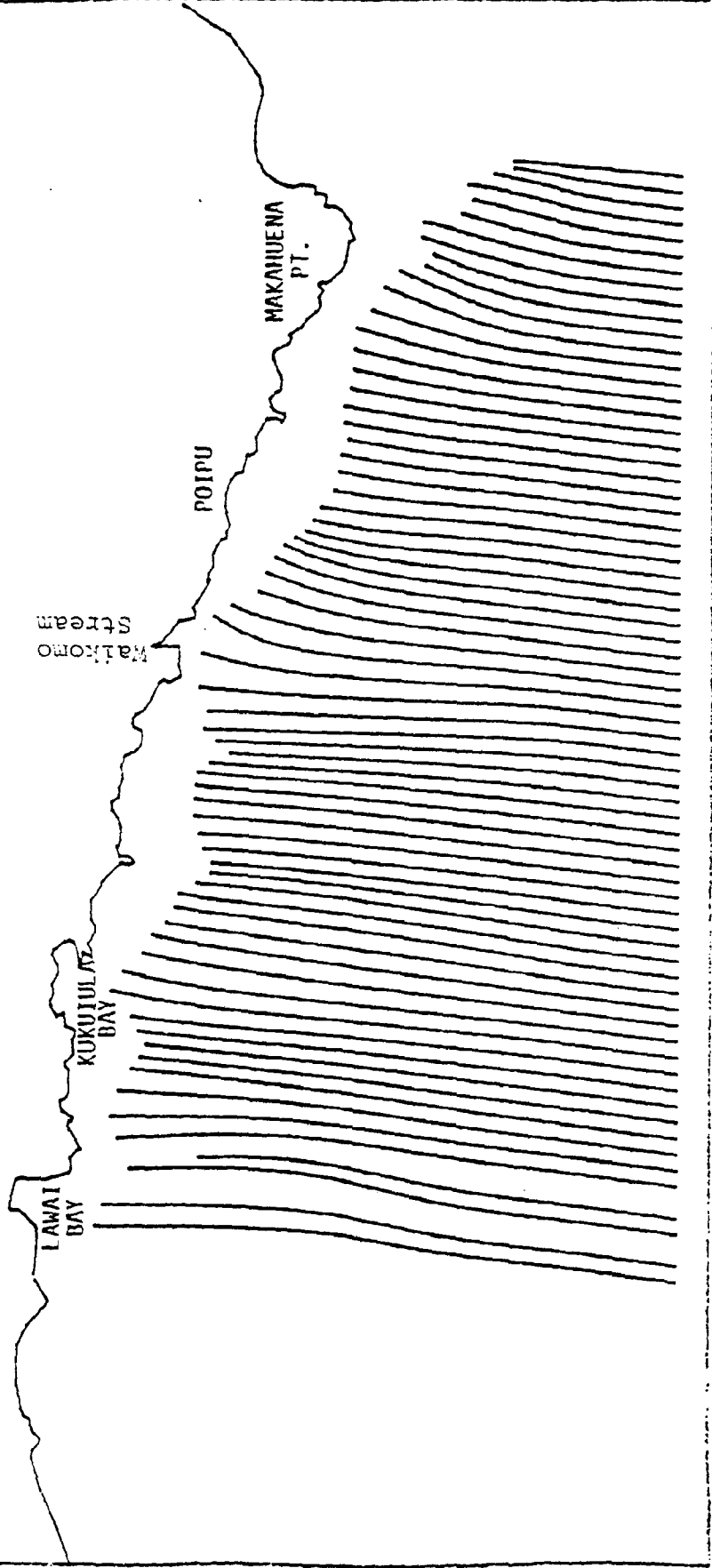
FIGURE B-5-2 SCENARIO HURRICANE 5b: S-SW WORST CASE WAVE REFRACTION (t = 0 hours)

T = 15.3 sec,  $H_0 = 48.7$  ft,  $\lambda_0 = 187^{\circ}$  TN

(From "Hurricane Vulnerability Study for Kauai, Poipu and Vicinity"  
by Sea Engineering Inc. and Charles J. Bretschneider, Jan. 1986)



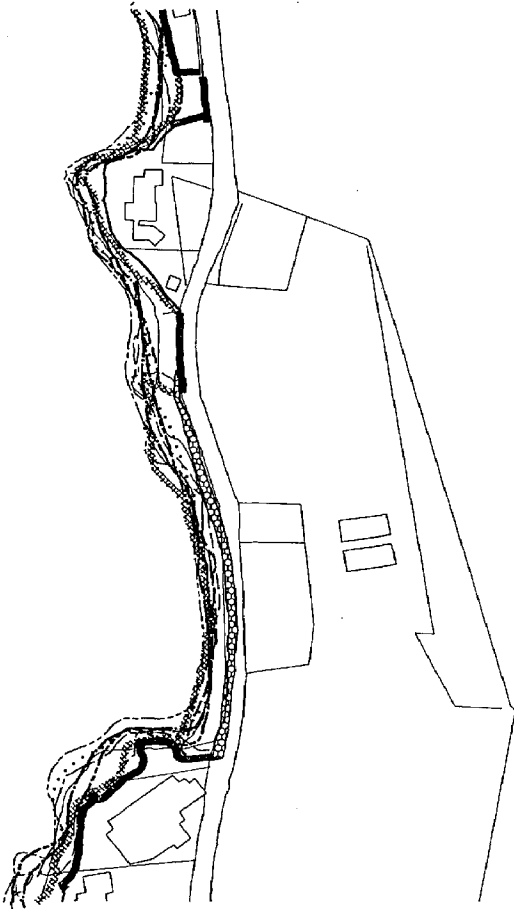
SCALE: 1" = 3,333'  
0 1 2 3000 ft.





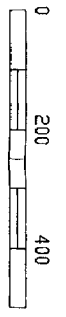
**APPENDIX K**

**AERIAL PHOTO ANALYSIS OVERLAY PLOTS  
FOR CASE STUDY SITE #3 - KUKUIULA-POIPU, KAUAI**



LAWAI BEACH  
POIPIU, KAUAI

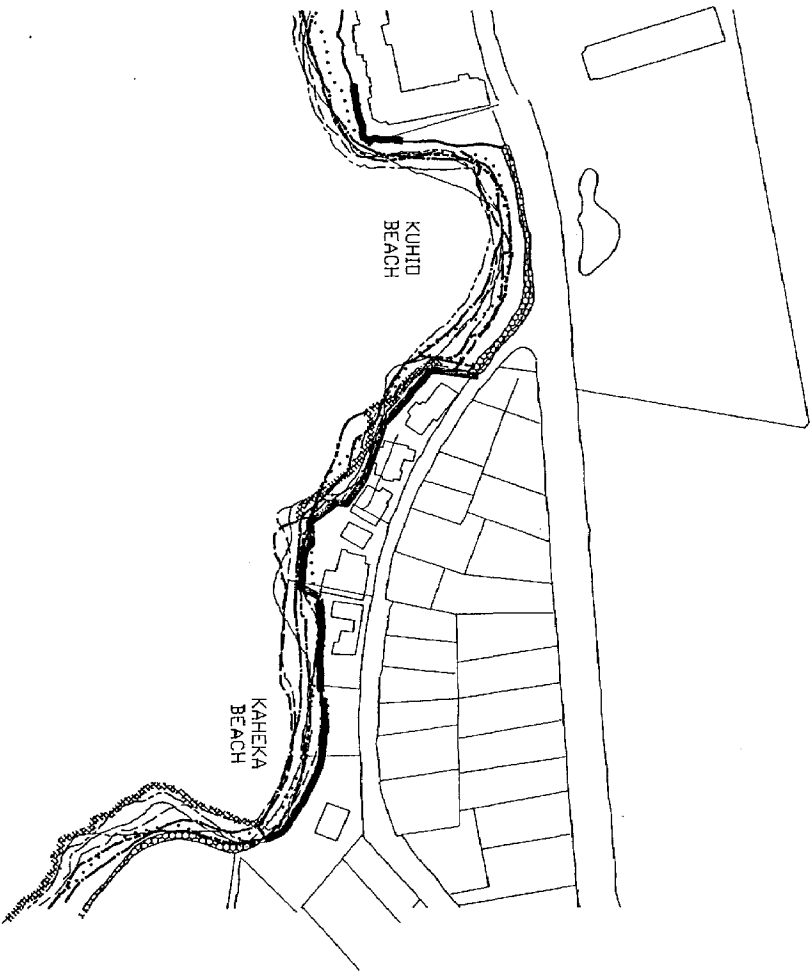
- PARCEL BOUNDARY
- AERIAL PHOTO 3-4-88
- BUILDING
- ROCKY SHORE
- SEAWALL
- REVELTMENT
- BEACH TIDE
- VEGETATION LINE
- AERIAL PHOTO 7-28-87
- AERIAL PHOTO 6-16-81
- AERIAL PHOTO 10-5-76
- AERIAL PHOTO 3-31-72
- AERIAL PHOTO 12-3-62
- AERIAL PHOTO 3-22-60



GRAPHIC SCALE (feet)

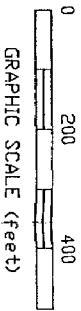
THE PREPARATION OF THIS MAP WAS FINANCED IN PART BY THE COASTAL ZONE MANAGEMENT ACT OF 1972 AS AMENDED ADMINISTERED BY THE OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE THROUGH THE OFFICE OF STATE PLANNING, STATE OF HAWAII

EDWARD K. NODA AND ASSOCIATES, INC.



KUHIID AND KAHEKA BEACHES  
POIPU, KAUAI

- PARCEL BOUNDARY
- AERIAL PHOTO 3-4-88
- BUILDING
- \*\*\*\*\* ROCKY SHORE
- ===== SEAWALL
- ▨▨▨▨▨▨▨▨▨▨ REVELTMENT
- BEACH TIE
- VEGETATION LINE
- AERIAL PHOTO 7-28-87
- AERIAL PHOTO 6-16-81
- AERIAL PHOTO 10-5-76
- ..... AERIAL PHOTO 3-31-72
- AERIAL PHOTO 12-3-62
- AERIAL PHOTO 3-22-60

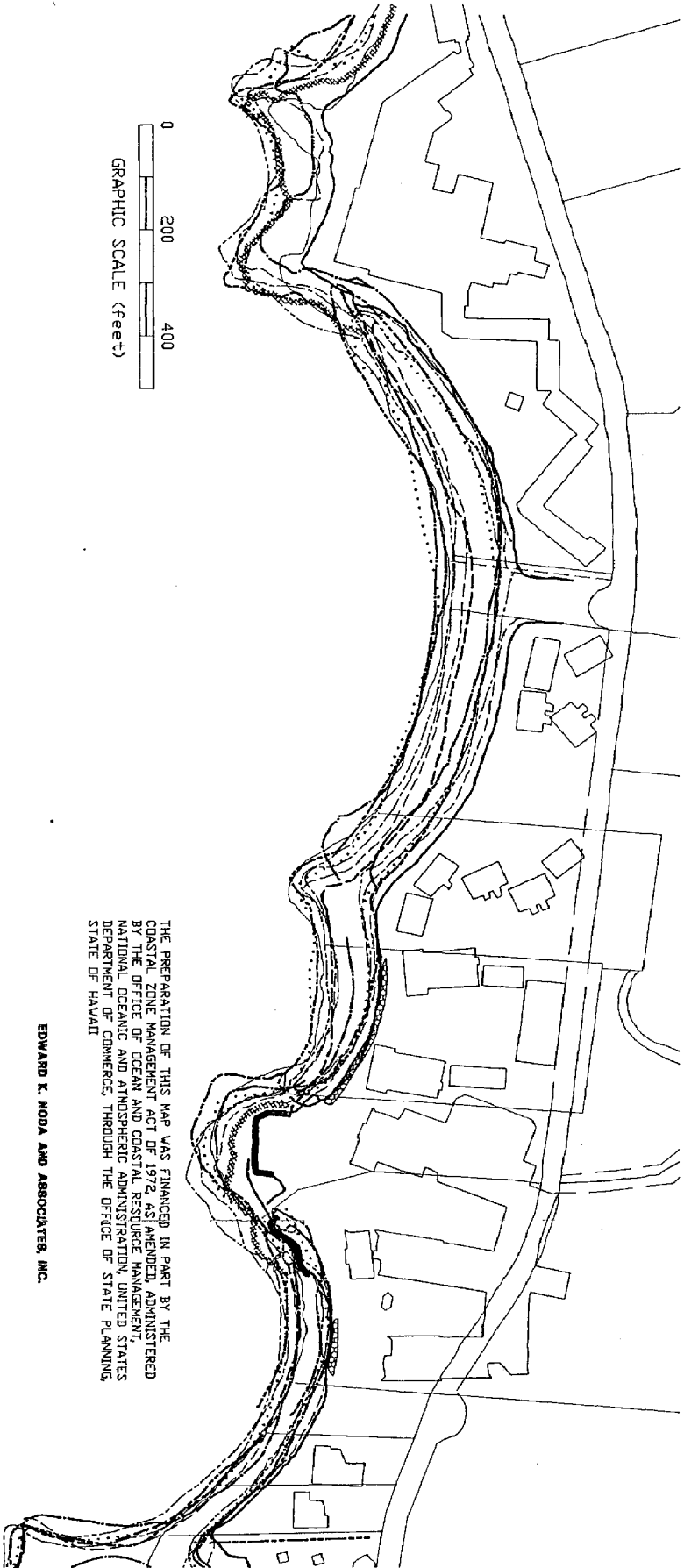


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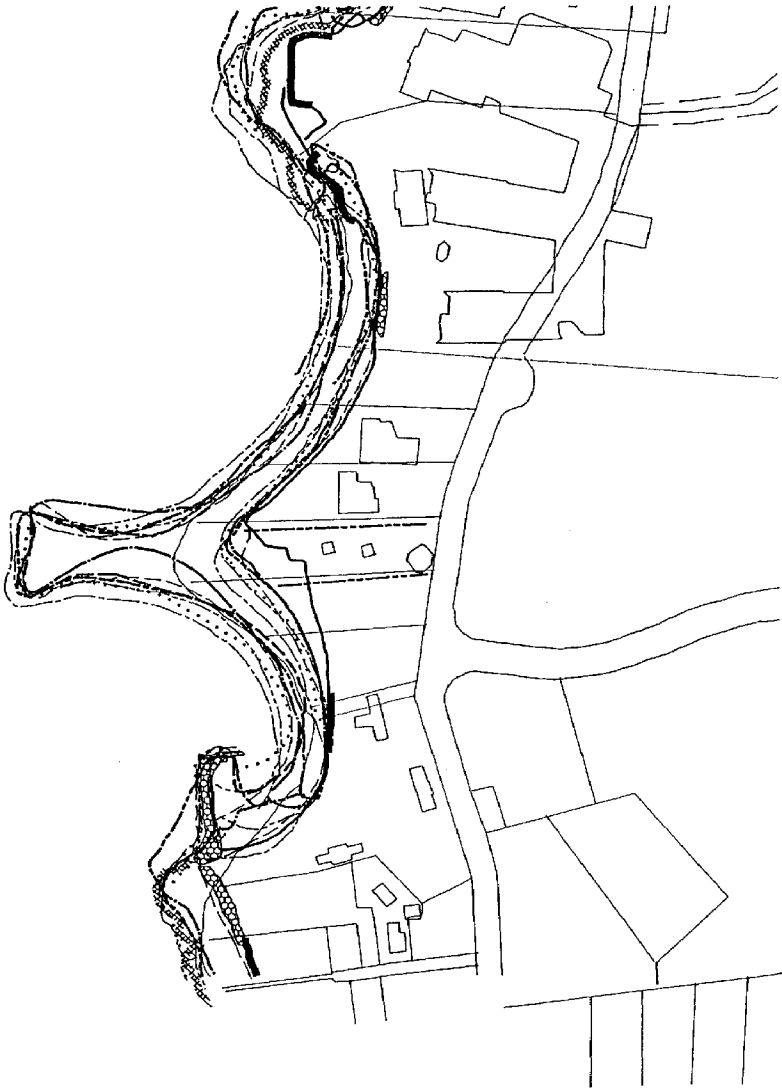
SHERATON BEACH  
 PUPU, KAUAI

- PARCEL BOUNDARY
- AERIAL PHOTO 3-4-88
- BUILDING
- ROCKY SHORE
- SEAWALL
- REVEMENT
- BEACH TOE
- VEGETATION LINE
- AERIAL PHOTO 7-28-87
- AERIAL PHOTO 6-16-81
- AERIAL PHOTO 10-5-76
- ..... AERIAL PHOTO 3-31-72
- ..... AERIAL PHOTO 12-3-62
- ..... AERIAL PHOTO 3-22-60



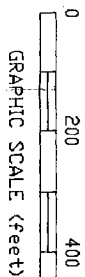
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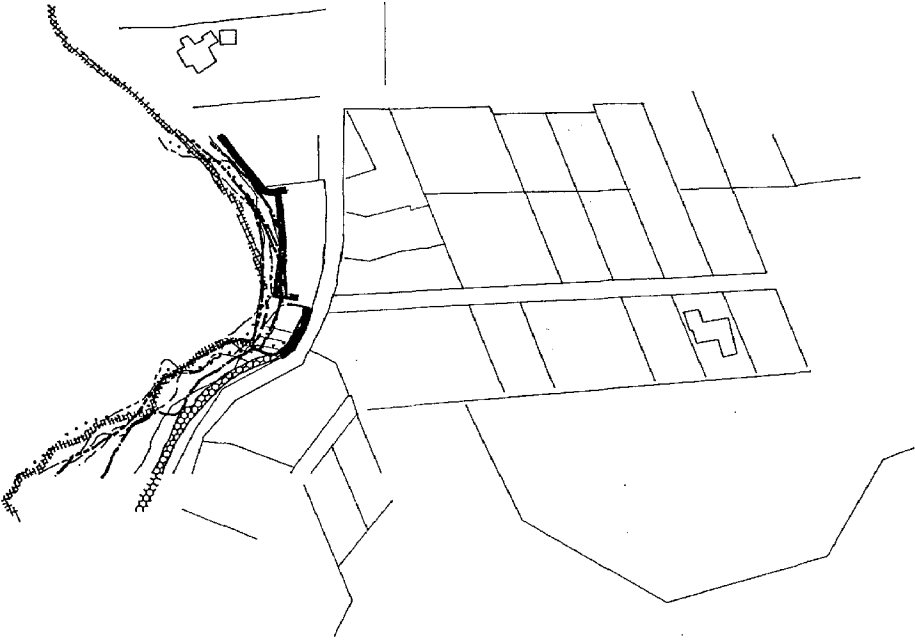
PIPIU BEACH PARK BEACH  
PIPIU, KAUAI

- PARCEL BOUNDARY
- AERIAL PHOTO 3-4-88
- BUILDING
- ROCKY SHORE
- SEAWALL
- REVEGETMENT
- BEACH TIDE
- VEGETATION LINE
- AERIAL PHOTO 7-28-87
- AERIAL PHOTO 6-16-81
- AERIAL PHOTO 10-5-76
- AERIAL PHOTO 3-31-72
- AERIAL PHOTO 12-3-62
- AERIAL PHOTO 3-22-60



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BRENNECKE BEACH  
PŪPŪ, KAUA'I

- PARCEL BOUNDARY
- AERIAL PHOTO 3-4-88
- BUILDING
- ROCKY SHORE
- SEAWALL
- REVELMENT
- BEACH TIDE
- VEGETATION LINE
- AERIAL PHOTO 7-28-87
- AERIAL PHOTO 6-16-81
- AERIAL PHOTO 10-5-75
- AERIAL PHOTO 3-31-72
- AERIAL PHOTO 12-3-62
- AERIAL PHOTO 3-22-60



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