

## **A PROGRESSIVE, BALANCED COASTAL CONSTRUCTION SETBACK ORDINANCE ON THE ISLAND OF KAUAI, HAWAII: IMPLEMENTATION AND LESSONS LEARNED**

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In terms of private property use and coastal resource protection, in January 2008 Kauai County, Hawaii, passed one the most balanced coastal construction setback ordinances in the Country: 'The Shoreline Setback and Coastal Protection Ordinance #863.'

To protect life, property, and preserve coastal resources the Ordinance sets procedures establishing minimum construction setbacks based on average lot depth and long-term shoreline erosion rates being generated by the University of Hawaii.

Furthermore, the Ordinance intent is to safely site structures away from hazards, such as coastal erosion, so shoreline hardening will not be required to protect the property during its useful life. Specific listed activities are also permitted or prohibited without a variance within the setback area. The Ordinance applies to all lands that abut or are within 500 feet of the shore.

To ensure broad support, variance procedures allow variations in zoning setbacks, minimum allowable buildable footprint, and shoreline setbacks, providing that under no circumstance shall the shoreline setback be less than forty feet for new dwellings, and twenty feet for rebuilding existing dwellings. Any structure approved within the setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure.

Hawaii CZM Regulations establish statewide shoreline setbacks of not less than twenty feet and not more than forty feet inland from the shoreline. However, County Planning Departments are delegated powers and duties for determining the shoreline setback line, and importantly may establish shoreline setbacks greater than the CZM requirements.

The Kauai County Ordinance states, no lot shall have a shoreline setback line of less than forty feet, and requires increasing pre-set setback distances based on increasing lot depth. It also requires lot depths of >160 feet with a proposed building footprint less than or greater than 5000sf to calculate a setback distance by multiplying the erosion rate by 70 or 100, respectively, plus a forty foot safety buffer.

Setback areas are presently being calculated and implemented on a project-by project basis, however, the bill is considered an interim measure until the data base of erosion rates being generated by the University of Hawaii is formally adopted by Kauai County. Due to its interim nature during initial implementation, improvements, such as expediting minor and temporary projects and developing emergency procedures, have been indentified and will be addressed in drafting the final Ordinance.

Of interest relating to consistency of County-wide implementation of this new setback ordinance is the fact that the state, not the County, has jurisdiction over development in shorefront parcels that are located within state-mapped Conservation Districts. The state is not legally bound to implement the County setback ordinance. The first application to the state for development within a state Conservation District since passage of the Ordinance resulted in the state approving a less restrictive setback distance than would have been required by the Ordinance. However, a condition that no shoreline hardening would be allowed for the life of the development was included in the state authorization thus ultimately meeting coastal resource-protection goals.

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