

FAQs for amendments to Chapter 205A, Hawaii Revised Statutes, enacted by Act 16, SLH 2020

What are the substantive amendments to Chapter 205A, Hawaii Revised Statutes (HRS), as enacted by Act 16, Session Laws of Hawaii (SLH) 2020?

1. SMA Permits are now required for residential developments along the shoreline. In addition to residential development that previously triggered the need for a SMA permit, a SMA permit will be required for construction or reconstruction of a single-family residence, regardless of its floor area size, that:
 - a) Is on a parcel that abuts the shoreline; or,
 - b) Is located on an area that is impacted by waves, storm surges, high tide or shoreline erosion.

The sea level rise exposure area (SLR-XA), 0.5 foot SLR scenario, identified from the State of Hawaii Sea Level Rise Viewer at <http://www.pacioos.hawaii.edu/shoreline/slr-hawaii/> is recommended as a reference map to help identify whether a non-shoreline parcel is impacted by waves, storm surges, high tide or shoreline erosion.

2. Reducing the shoreline setback to less than 40 feet is no longer allowed.
3. Prohibitions have been incorporated to protect beaches and coastal dunes by restricting and/or prohibiting construction of shoreline hardening structures at sites with beaches.
4. New definitions or changes in definitions include the following:
 - Adds sea level rise and high tide to the definition of “coastal hazards”.
 - Adds a definition of “beach” to enhance beach protection and use beach including dunes as natural buffer against coastal hazards;
 - Adds protection and restoration of “coastal dunes” and “coral reefs” to coastal zone management objectives and policies; and
 - Includes as “development” the construction or reconstruction of a single-family residence on a shoreline parcel, or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion and, therefore, requires an SMA permit.

How do changes from Act 16, SLH 2020 impact private property?

1. Seawalls, revetments, and other shoreline hardening structures are no longer allowed at the sites with beaches as defined in HRS § 205A-1 unless it is in the interest of the public.
2. The counties shall no longer allow the reduction of the shoreline setback to less than 40 feet for any shoreline parcels.

3. Except for repairs of existing dwellings, construction or reconstruction of a single-family residence on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide or shoreline erosion will trigger the requirement of a SMA permit.

**How do the shoreline setback changes affect current setback regulations in each county?
Will some counties have to adjust their setbacks to comply with Chapter 205A?**

With the enactment of Act 16, SLH 2020, all county SMA and Shoreline Setback rules or ordinances must be amended accordingly to comply with Chapter 205A. Prior to adoption of amended rules or ordinances, the provisions of Chapter 205A, as amended, shall prevail.

Shoreline Parcels and Structures within the Shoreline Area

1. What is a shoreline parcel?

A shoreline parcel is a parcel that abuts the shoreline, as defined in HRS § 205A-1. In contrast, a non-shoreline parcel is a parcel that does not abut the shoreline. Please note that a parcel abuts a cliff can be a shoreline parcel.

2. How can I know if my property is on a shoreline parcel?

You can visualize the parcel where your property is located from the Hawaii SMA Locator map at <http://planning.hawaii.gov/czm/special-management-area-permits/> and contact your county planning department to confirm whether your property is on a shoreline parcel.

3. What is a shallow shoreline parcel?

A shallow shoreline parcel means its buildable area is limited, e.g., less than 50% of the parcel, after applying the minimum shoreline setback, which may be more than 40 feet, as determined by the counties.

4. If a parcel abuts a cliff, is this parcel a shoreline parcel?

Yes. According to Hawaii Administrative Rules (HAR) § 13-222-16, on cliffs or ledges where a ground survey of the shoreline may be extremely difficult, the top of the cliff or ledge may be marked and depicted as the shoreline on map. In other words, a parcel that abuts a cliff is a shoreline parcel.

5. What is a shoreline setback variance?

A shoreline setback variance is an exception to the prohibition of a structure that will be constructed within the shoreline area as defined in HRS § 205A-41.

6. How do I know if my property requires a shoreline setback variance?

A shoreline setback variance is not a permit but an exception to the prohibition. Whether or not a shoreline setback variance may be granted for a structure within the shoreline area will require an assessment on a case-by-case (discretionary) basis dependent on whether the proposed structure or action meets the provisions and criteria of HRS § 205A-44 and your county shoreline setback ordinances and rules.

7. What if a property owner purchases a shallow shoreline parcel today and wants to build a house on it? Will they be able to apply for a setback variance?

They must apply for a shoreline setback variance and a SMA permit for their proposed house even it is partially within the shoreline area as defined in HRS § 205A-41. A shoreline setback variance may be granted for use of an existing shallow shoreline parcel.

8. What is the difference between a seawall and a revetment?

A seawall is a vertical or near vertical structure which reflects incoming wave energy, whereas a revetment is a sloped structure of boulders, usually ungrouted, which generally reduces wave energy and reflections. Both seawalls and revetments are shoreline-hardening structures, and eventually result in disappearance of sandy beaches.

9. What if a coastal property includes a beach, but the property next to it has a seawall that is causing increased erosion of the shoreline, can the property with the beach put in a seawall?

Seawalls and revetments are prohibited in areas with beaches unless the granting of the shoreline setback variance is clearly demonstrated to be in the interest of the public.

10. What does it mean to be in the public interest?

The interest of the public means a benefit from a proposed action for public safety and/or public health, for the protection of public infrastructure in response to risk of coastal hazards, or for beach protection/sand retention for public use and recreation or coastal ecosystems.

11. Our shoreline parcel has an existing seawall that needs repair. What type of repair and how much repair can we do?

“Repair” means an action of fixing, improving or rebuilding any part of an existing legally constructed structure, but not the entire structure, for example, less than 50% of its replacement value, solely for the purpose of its maintenance. Your county planning department will assess and determine whether your proposed action is a repair or not.

12. I have a house that has an existing seawall, does this mean I have to remove it?

If the existing seawall is not previously approved by a government agency, or it is not a nonconforming structure, you will have to remove it or apply for an approval if the seawall is in the interest of the public.

13. The sand beach that is fronting my shoreline parcel is eroding from high waves. What type of shore protection am I allowed to build?

Seawalls and revetments are prohibited from the sites with beaches unless it is clearly in the interest of the public. Beach nourishments and restoration, and other soft mitigation measures would be preferred. At a regional scale, beach nourishments with installation of offshore groins/breakwaters could be an effective way to restore and maintain beaches in front of high-energy waves. In some high-energy wave beach areas, retreat may be eventually considered and/or planned as the best alternative.

14. Does the process for putting sandbags change?

Installation of sandbags is a temporary and emergency measure to buy time to protect your property from the shoreline erosion. The property owners shall remove the sandbags after the expiration of the emergency permit. On the *makai* side of the shoreline as defined in HRS § 205A-1, the Office of Conservation and Coastal Land (OCCL), Department of Land and Natural Resources, will assess and determine whether sandbags are allowed under OCCL's administrative rules. On the *mauka* side of the shoreline, the county planning departments will assess and determine whether sandbags are allowed from an SMA emergency permit.

15. My house is located on a shoreline parcel.

- 1) Can I repair the house?

Yes, you can repair your house that is located on a shoreline parcel.

- 2) Can I enlarge the house by building a 2nd story?

No, if your house is located within the shoreline area. Expansion of an existing single-family residence such as addition of a 2nd story shall be prohibited within the shoreline area.

- 3) Can I increase the footprint of the existing house by enlarging the single-story structure (not build 2nd story)?

No, if your house is within the shoreline area. Expansion of an existing house such as increase in the footprint of the structure shall be prohibited within the shoreline area.

- 4) Can I demolish the existing house and rebuild a new house?

You can demolish your existing house within the shoreline area but will be prohibited from rebuilding a new house within the shoreline area without a shoreline setback variance, which may not be granted. You are highly encouraged to relocate your

house outside of the shoreline area to reduce the risk from coastal hazards as defined in HRS Chapter 205A.

- 5) Can I build a second dwelling like an Additional Dwelling Unit (ADU) or Ohana Unit?

You may be allowed to build a second dwelling outside of the shoreline area. However, you will be prohibited from building a second dwelling such as an ADU or Ohana Unit within the shoreline area.

- 6) What is the building setback on the ocean-side of the lot and what permit do I need to build in the setback area?

Your county planning department assesses and determines the shoreline setbacks for your proposed building. You need a shoreline certification from the Department of Land and Natural Resources, and a shoreline setback determination or variance, a SMA use permit or SMA minor permit, a building permit, and other permits such as grading and grubbing permits from your county planning department.

- 7) Can I subdivide the lot?

Your county planning department will assess and determine your proposed subdivision. Dividing a shoreline lot into shallow shoreline lots shall not be proposed to avoid limited buildable areas after applying the requirement of shoreline setbacks.

16. I have a house within the shoreline area, am I allowed to repair or maintain my property?

As of today, provisions of Chapter 205A allow repairs and/or nonstructural improvements on an existing house within the shoreline area. However, the existing structure that is repeatedly damaged by coastal hazards shall be relocated outside of the shoreline area.

17. I own a parcel that is located on the mauka side of a shoreline parcel. Can we build a single-family house?

Yes, you can build a single-family house if it is allowed by your county land use policies. If your proposed single-family residence is located within the SMA, you must submit your proposal to your county planning department for an assessment and determination as to whether a SMA permit is required.

18. Are single-family residences on the shoreline parcel included in the definition of "Development"?

Yes. Construction or reconstruction of a single-family residence on the shoreline parcel is defined as "development" pursuant to HRS § 205A-22, as amended. A SMA permit is required for construction of a single-family residence on the shoreline parcel.

19. If my proposed single-family residence is located outside of the SMA, but a portion of the parcel where the proposed residence is located is inside the SMA, is this proposed single-family residence considered as “development” and therefore requires a SMA permit?

No. As defined in HRS § 205A-22, "Development" means any of the uses, activities, or operations on land or in or under water within a special management area. If your proposed residence is outside of the SMA, then it is not considered as “development”, and no SMA permit is required.

Hawaii Coastal Zone Management (CZM) and County Contacts

1. Who can I contact with more information about the changes to HRS Chapter 205A?

You can contact the State of Hawaii Office of Planning, Hawaii CZM Program at (808) 587-2846 for more information about the amendments to HRS Chapter 205A.

2. Who do I contact if I have questions about permits for my property?

Please contact your county planning department. Contact information for the four county planning departments is as follows:

Kauai County Planning Department https://www.kauai.gov/Planning	(808) 241-4050
Maui County Planning Department https://www.mauicounty.gov/121/Planning-Department	(808) 270-7735
Hawaii County Planning Department https://www.planning.hawaiicounty.gov/home	(808) 961-8288 (Hilo) (808) 323-4770 (Kona)
Honolulu Department of Planning and Permitting http://www.honoluluodpp.org/	(808) 768-8014

3. If I want to visualize whether my property is located within the county designated SMA, where can I find online locator map?

With information of Tax Map Key (TMK) or address, you may visit the SMA locator online map at <https://planning.hawaii.gov/czm/special-management-area-permits/>

4. I am interested in purchasing a property that is near the shoreline. How do I know if it is considered "impacted by sea level rise"?

You may visit the Hawaii Sea Level Rise Viewer at <https://www.pacioos.hawaii.edu/shoreline/slr-hawaii/> for the sea level rise exposure areas across the main Hawaiian Islands.