

Calvert G. Chipchase

Partner, Cades Schutte LLP

cchipchase@ca-des.com

set back

/set bak/

delay or impede the progress of someone or something

Setback

/set - bak/

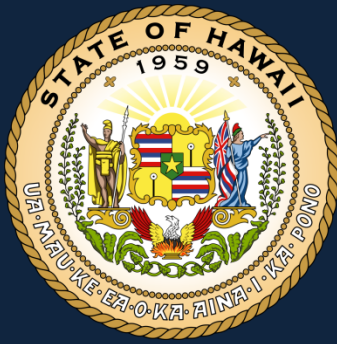
the minimum distance of a structure or other feature from a street or road, a river or other stream, a shore or flood plain, or any other place which is deemed to need protection



Road Widening Setbacks

STATE'S POLICE POWER

Authority to regulate land for the public health, safety, morals and welfare.



Zoning Enabling Act

Sets forth the general parameters for the exercise of a county's zoning powers.

Zoning shall be accomplished within the framework of a long range, comprehensive general plan prepared or being prepared to guide the overall future development of the county.

Zoning power shall be exercised by ordinance which may relate to

- The location, height and size of buildings and other structures
- The location of roads, schools, and recreation areas
- Building setback lines and future street lines
- The percentage of a lot that may be occupied, size of yards, courts, and other open spaces
- Minimum and maximum lot sizes
- Other such regulations as may be deemed by the boards or city council as necessary and proper to permit and encourage orderly development of land resources within their jurisdictions

The Takings Clause

Nor shall private property be taken for public use, **without just compensation.**



The Takings Clause

Eminent Domain

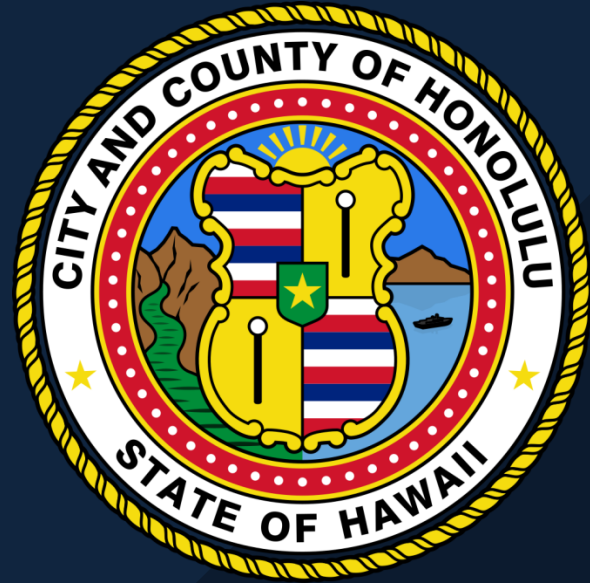


Inverse Condemnation



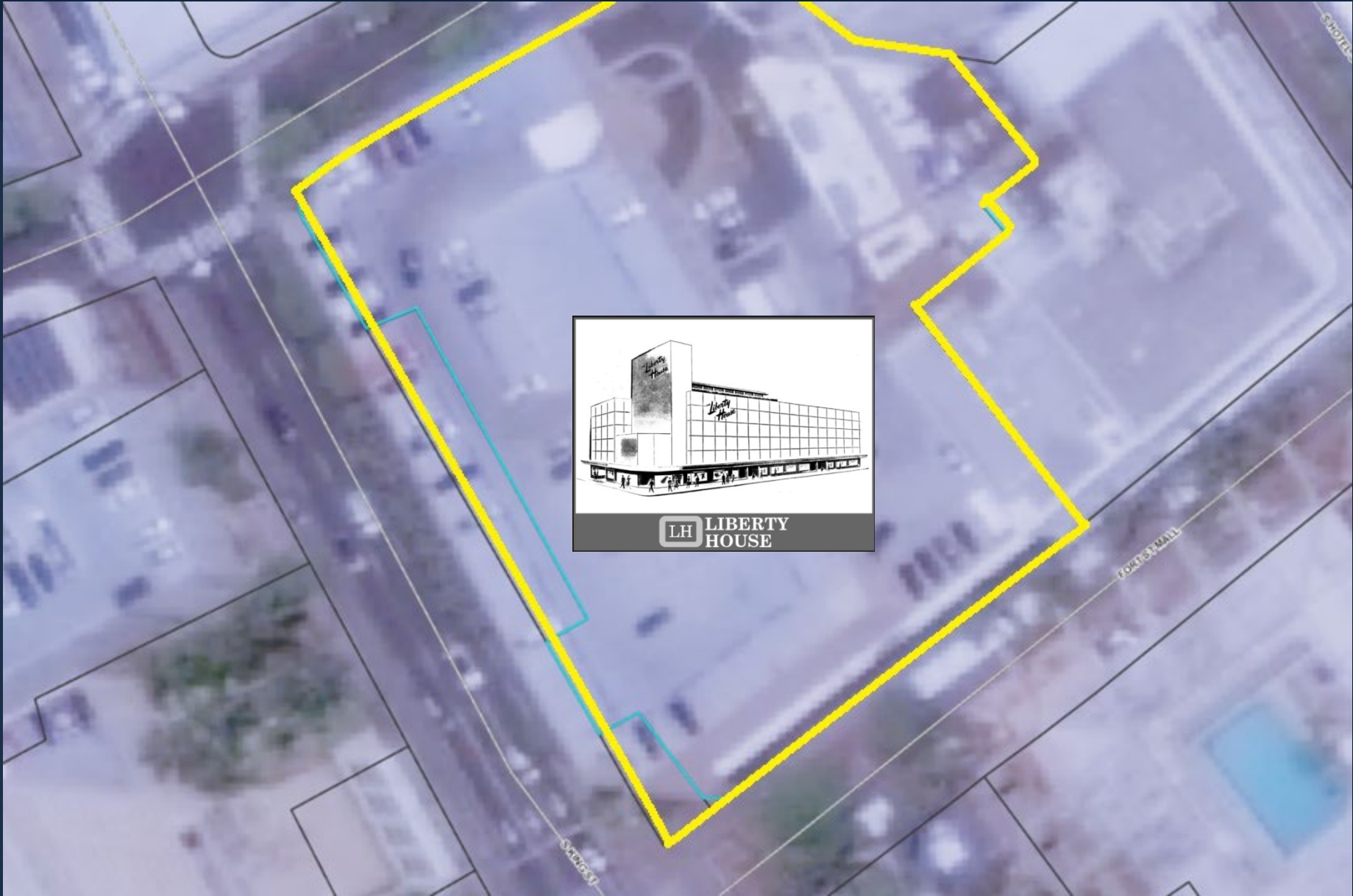


V.



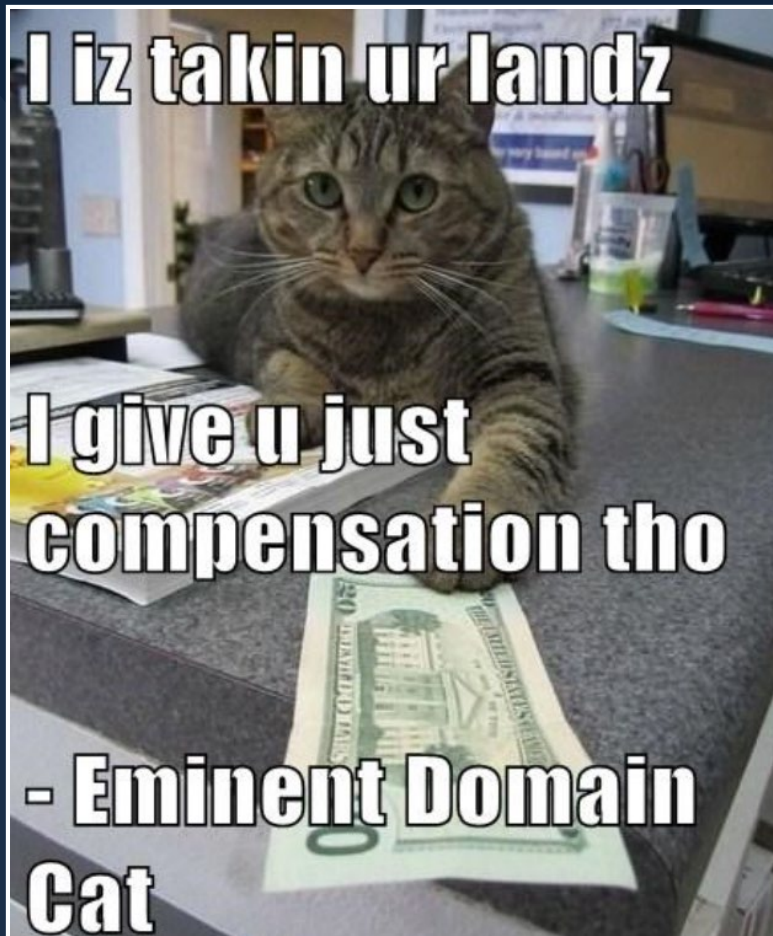
H.C. Cornuelle, Inc., et al. v. The City and County of Honolulu

71 Haw. 652 (1990)



LH

LIBERTY HOUSE



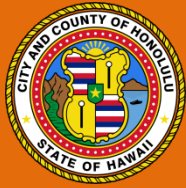
Committee Report No. 1 (1978)

“The 20-foot widening of King Street between Alakea Street and Nu‘uanu Street be retained.”

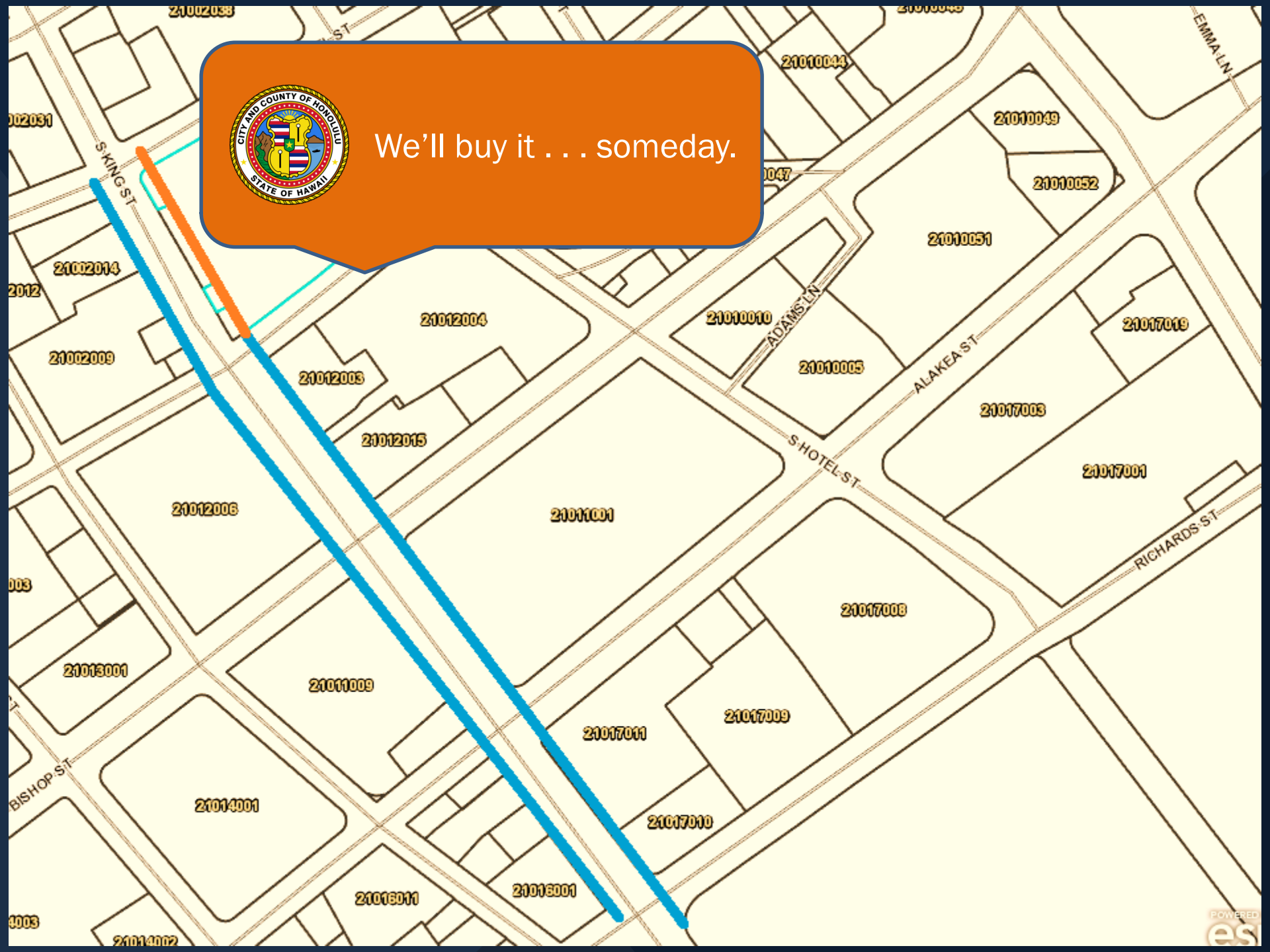
Unanimously adopted by Council.

Became law; landowners could not build within the setback.

City agreed to a “friendly condemnation,” acquire within 2-6 years.



We'll buy it . . . someday.





Has the road widening setback area been unconstitutionally taken?

A Governmental Restriction Is An Unconstitutional Taking If It

Does not substantially advance a legitimate state police power interest such as public health, safety or welfare (including aesthetic values), *Agins v. Tiburon* (1980);

OR

Denies the owner all economically viable use of the land, *Nollan v. California Coastal Comm'n* (1987).



“While the City appears to argue that its actions are a valid exercise of police power, the evidence shows that they are actually a misuse of the eminent domain power” such that a unconstitutional taking had occurred and just compensation was warranted.



“The City was engaged in a ‘land banking’ operation, prohibiting the use of the property until it eventually acquired ownership. . . . Such land banking is not a legitimate state police power purpose.”

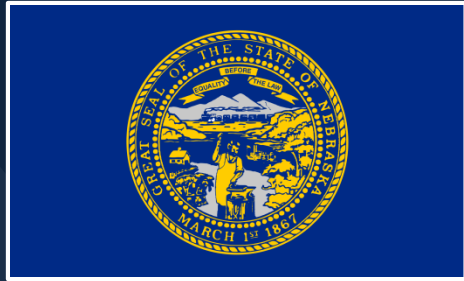
“Having found a taking we need not face the claims of error relating to whether to look to the entire parcel or just the setback area to determine if any economic use or value remains of the property.”



A municipality in exercise of planning power could not dictate tract of land to highways uses on “official map” and thereby deprive landowner of all use of tract without making compensation until municipality was prepared to lay out the highway.



Commission’s resolution placing land in reservation for up to three years amounted to a virtual “freeze” on the use of the property in its entirety and was tantamount to a “taking” without compensation.



A city may not, under the guise of police power, require a property owner to dedicate private property for some future public purpose as a condition of obtaining a building permit without paying the property owner just compensation, when the requested dedicated property is to be placed in a land bank for future use by the city and such future use is not directly occasioned by the construction sought to be permitted.



A city cannot 'freeze' property thereby preventing the owner from improving it so that he may enjoy beneficial use thereof only because the city may, in the future, need such property in constructing a freeway.



The claim that the city has the right to “freeze” plaintiff’s property, preventing her from its beneficial use until the city gets around to appropriating it for public purposes as a part of the freeway, is without foundation.



If the city needs the property in that development, then an immediate proceeding in eminent domain would end this lawsuit. All that has been done so far toward building the freeway is tentative in character. The proceeding looking to the construction of the freeway has not reached a stage compelling the city to appropriate the property, **nor is the plaintiff compelled to stand by, paying taxes without benefit, until the development reaches a stage, if it ever does, where her property must be taken for freeway purposes.**

IF I PEE HERE

ALL THIS WILL BE MINE



A Governmental Restriction Is An Unconstitutional Taking If It

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OR

Denies the owner all economically viable use of the land, *Nollan v. California Coastal Comm'n* (1987).



Other Claims?

A

Physical Taking

B

Total Regulatory Taking

C

Partial Regulatory Taking

D

Dedications and Exactions

E

Agins Due Process

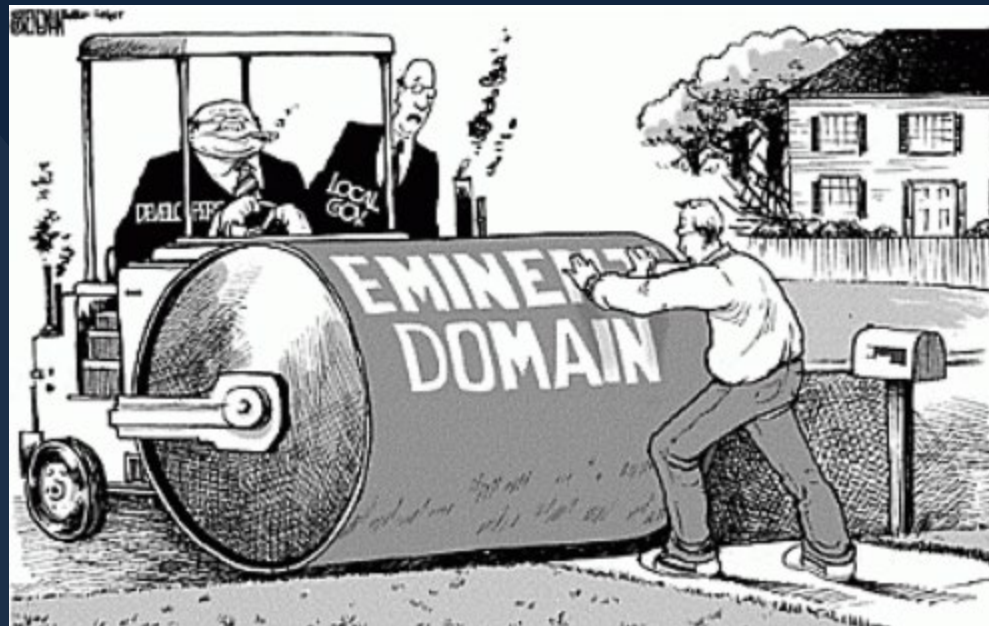
Honolulu AIA LUO Task Force (RESIDENTIAL ISSUES)

Meeting Minutes

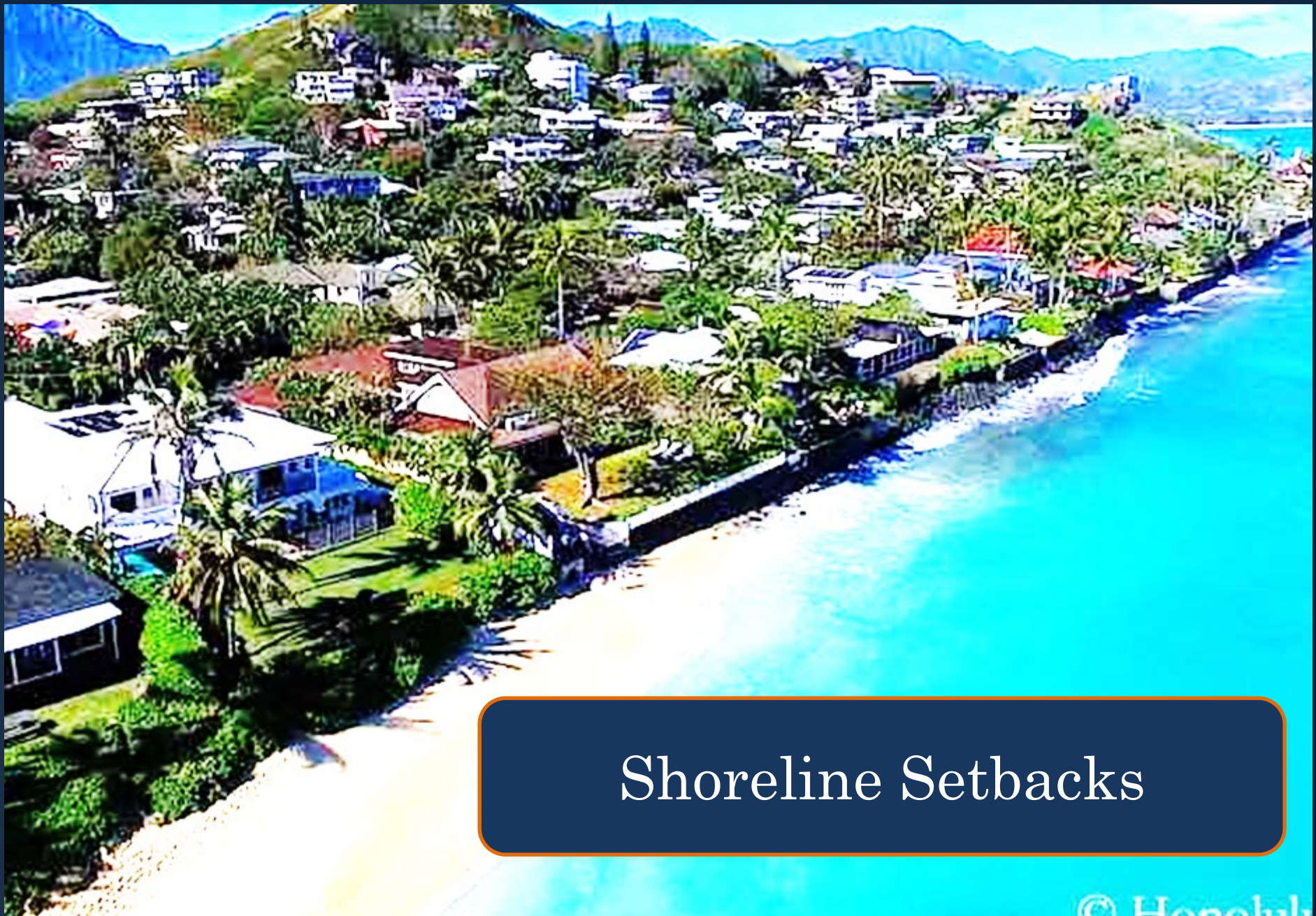
Date: January 17, 2018
Time: 12:00pm-1:04pm
Location: Center for Architecture (CFA)

g) Road Widening Setbacks

- i) Consider removing development restrictions within road widening setbacks. These areas will never be converted into roads. Potential to put land back into productive use.







Shoreline Setbacks

Coastal Zone Management Act

HRS Chapter 205A

PURPOSE

Provide for the effective management, beneficial use, protection and development of the coastal zone, which area encompasses the entire State.

SMA

The Special Management Areas are the areas of the islands that are in close proximity to the shoreline and subject to special controls on development.



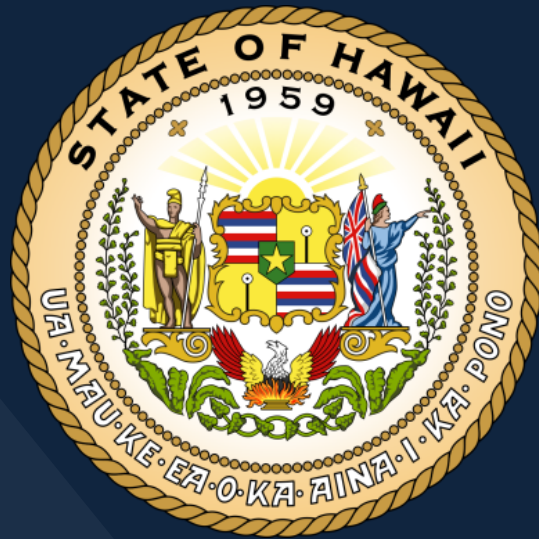
“Shoreline”

Definition. The upper reaches of the wash of the waves, other than storm and seismic 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. HRS § 205A-1.

Ownership. The line of ownership dividing public and private coastal property is the seaward boundary.

Shoreline Setbacks. Shoreline certification process establishes a baseline from which shoreline setbacks are measured.





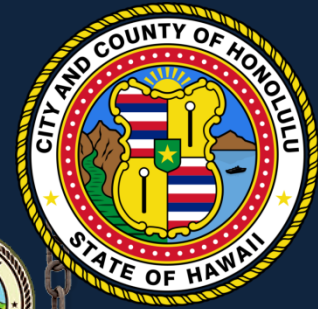
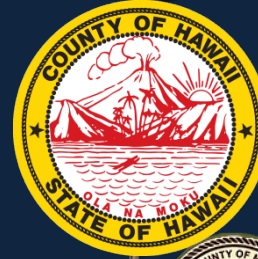
Determines shoreline as a baseline for setback

Jurisdiction makai of shoreline

Manages beaches



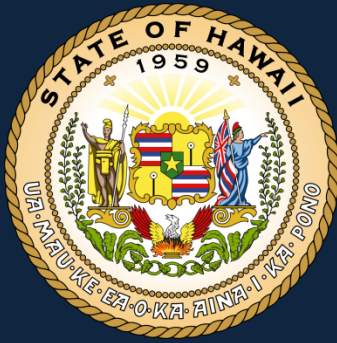
County of Kauai



Determines actual setback and permitting

Jurisdiction mauka of shoreline

Manages dunes



SB 2060

Relating to Coastal Zone Management

Took effect upon approval.

Findings:

- 70% of beaches undergoing a trend of chronic sand loss and shoreline retreat.
- Hardening of shorelines through a hardship variance set into motion a cycle of shoreline armoring that causes “flanking,” or amplified erosion, on adjacent properties that can extend along an entire beach.
- Renovation and expansion of single-family homes in erosion and flood-prone coastal areas extends building lifetimes indefinitely and allows for virtual complete coverage of coastal parcels by these structures.

Purpose of the Act is to strengthen coastal zone management policy to protect state beaches and to reduce residential exposure to coastal hazards.



Prohibits construction of private [erosion protection] shoreline hardening structures [seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not], including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.



Subjects homes on SMA lots to SMA review.

All lots within SMA lose an additional minimum 20 feet of setback.

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 pursuant to chapter 91, and shall enforce the shoreline setbacks and rules pertaining thereto.



Structures are prohibited in the shoreline area without a variance.

Variations allowed for "private facilities or improvements that will not adversely affect beach processes, result in flanking shoreline erosion, or artificially fix the shoreline."

Variations **not** allowed to "artificially fix the shoreline . . . in areas with sand beaches or where artificially fixing the shoreline may interfere with existing recreational and waterline activities."

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

- Completed prior to June 22, 1970;
- Received either a building permit, board approval or shoreline setback variance prior to June 16, 1989;
- Work being done consists of maintenance, repair, [reconstruct ~~ion~~] and minor additions or alterations (**and not** enlarging, rebuilding or replacing a permitted structure).



Hawaii

Kalaoa

Hawaii

Honolulu

Kilauea

Kalaoa

Hilo

Holualoa

Hawaii

Kailua Kona

BRACE YOURSELVES.



STORYTIME IS COMING...

**THANK YOU FOR
LISTENING**

ANY QUESTIONS?