

## Scoping Session w/ Colin Lee, David Kimo Frankel, Elena Bryant, & Wayne Tanaka

05/17/2024 (In-person)

*In attendance: Colin Lee, David Kimo Frankel, Elena Bryant, Wayne Tanaka, Michael Cain, Kanani Smull, Trevor Fitzpatrick, Tiger Mills, & Amy Wirts*

An in-person scoping session was held with Colin Lee (Climate Change & Resilience Policy Analyst for the UH School of Ocean and Earth Science and Technology), David Kimo Frankel (Attorney for the Sierra Club of Hawaii), Elena Bryant (Attorney for Earthjustice), and Wayne Tanaka (Director for the Sierra Club of Hawaii). They expressed overall support for many of the proposed rule amendments, and had the following concerns/suggestions:

- Suggested that OCCL spell out the various permit requirements instead of using abbreviations (e.g., instead of using “SPA,” spell out “Site Plan Approval” each time that it is mentioned).
- Suggested that OCCL not utilize “exhibits” in the proposed rules because doing so makes the regulations within those exhibits difficult to cite in court.
- Decrease the maximum developable area even further for single family residences in the Conservation District.
- Suggested that OCCL either increase or decrease the allowable time period for an emergency permit to comport better with seasonal changes that may affect a landowner’s ability to remove temporary erosion control structures.
  - It was also suggested that perhaps OCCL should not allow emergency permits makai of the shoreline at all, instead requiring landowners to obtain a land disposition and “follow the process.”
- Concerned that allowing private installation of sandbag and burrito erosion control structures at sites with sandy beaches constitutes shoreline hardening and does not comply with Chapter 205A, Hawaii Revised Statutes (HRS).
- Require landowners to demonstrate a “concerted effort” when applying for an emergency permit.
- Concerned that Conservation District criteria listed under Section 13-5-30(e), Hawaii Administrative Rules (HAR), may be leaving out some resources by not specifically mentioning them.
- Suggested that Exhibit 5 reflect the state of the law (i.e., no private shoreline hardening on sites with sandy beaches) and that property owners should acknowledge that their property is subject to sea level rise, and they may be required to move it in the future.
- Other housekeeping measures for clarity and consistency.

## Scoping Session w/ Caren Diamond

05/20/2024 (Zoom)

*In attendance: Amy Wirts, Caren Diamond, & Kanani Smull*

A virtual scoping session was held with Caren Diamond (environmental advocacy individual). Ms. Diamond had the following concerns/suggestions:

- Suggested that the depreciation of a nonconforming structure should be subtracted from any valuation of the total replacement cost.
- Suggested that OCCL clarify that fencing is not allowed along the shoreline without a valid shoreline certification.
- Suggested that OCCL clarify that landscaping projects are not allowed along the shoreline without a valid shoreline certification.
- Suggested that OCCL clarify that the repair of septic systems is not allowed along the shoreline without a valid shoreline certification.
- Requested that OCCL ensure that Chapter 13-5, HAR, complies with Act 16 (2020), codified as Chapter 205A, HRS, regarding private shoreline hardening at sites with sandy beaches.
- Suggested that Exhibit 5 reflect the state of the law (i.e., no private shoreline hardening on sites with sandy beaches) and that property owners should acknowledge that their property is subject to sea level rise, and they may be required to move it in the future.
- Concerned that the proposed rule amendments have, in the definition for “coastal high hazard area” under Section 13-5-2, HAR, replaced the VE zone with Zone V.
- Suggested that the proposed rules include amendments regarding enforcement of land use violations along the shoreline.
- Suggested that OCCL utilize the public trust doctrine to make the proposed rule amendments stronger.
- Concerned that the proposed rule amendments are not strong enough to prevent landowners from continuing to develop and build in areas that are threatened by coastal erosion and sea level rise.