

THE SHORELINE BOUNDARY

As the recent hurricanes in the Gulf states demonstrated, oceanfront properties are uniquely susceptible to the forces of nature. When lending on oceanfront property, the proximity of the improvements to the water and the location of the shoreline boundary may become issues in making the loan.

In 1968, the Hawaii Supreme Court said that the shoreline boundary is “along the upper reaches of the wash of the waves, usually evidenced by the *edge of vegetation* or by the *line of debris* left by the wash of the waves.” Not only does this boundary establish the line between private property and the public area of the beach, it also becomes the baseline for the “shoreline setback” rules established by the counties.

On Oahu, for example, the shoreline setback rules substantially limit a homeowner’s ability to erect any structures or improvements within 40 feet of the shoreline. Maui County uses a more complicated formula utilizing a setback from the shoreline measured by an “erosion hazard rate” determined by the county.

Determination of the shoreline boundary is done through an application to the State Department of Land and Natural Resources. A property owner can get a “certified shoreline” from the State which is good for a period of 12 months and can be used as evidence of the shoreline.

It is not always easy to determine where the shoreline boundary should be located. Although the Hawaii Supreme Court treated them as equivalent, the “edge of vegetation” is not necessarily in the same location as the “debris line.” In doing shoreline certifications the State has tended to use the vegetation line because it is easier to measure.

Some have charged that this gives an improper incentive to oceanfront owners to encourage growth of *naupaka* and other vegetation that encroaches on the public portion of the beach. In July, the Sierra Club filed a lawsuit seeking to require the State to also determine the “debris line,” and to give preference to the line which is further inland.

The other problem is that shorelines tend to change naturally over time. Under traditional law, the shoreline boundary (and thus the amount of land owned by the property owner) can move back and forth, depending upon whether the property is eroding or accreting.

In 2003, however, our State Legislature changed these rules. Although a property owner can still lose land through erosion, the landowner does not necessarily gain land through accretion. Instead, the Legislature provided that the accreted land remains public property, except in the case where the accretion is simply restoring earlier erosion.

The extent to which an oceanfront parcel is useable depends upon where its legal shoreline boundary is located. Especially where there has been a history of substantial erosion, both the appraiser and the lender will want to consider what effects this could have on the value of the property for lending purposes.