

Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 851
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred S.B. No. 851 entitled:

"A BILL FOR AN ACT RELATING TO SHORELINE SETBACKS AND HISTORIC AND CULTURAL SITES IN THE DISTRICT OF KOOLAULOA,"

begs leave to report as follows:

The purpose of this measure is to preserve and protect historic and cultural sites by strongly encouraging developers of commercial or residential development projects in the Ko'olauloa District to maintain a minimum shoreline setback of seven hundred fifty feet.

Specifically, this measure requests any developers of commercial or residential development projects planned for the area makai of Kamehameha Highway between Kawela Stream and Marconi Road to:

- (1) Maintain a minimum shoreline setback of seven hundred fifty feet;
- (2) Conduct a comprehensive historic and cultural preservation assessment, pursuant to sections 6E-5.5, 6E-10, and 6E-43, Hawaii Revised Statutes; and
- (3) Comply with all other recommendations from the Oahu Burial Council, the State Historic Preservation Division, and other interested agencies of the Department of Land and Natural Resources.



Testimony in support of this measure was submitted by the Office of Hawaiian Affairs; the Sierra Club, Hawaii Chapter; Na Iwi Ola o He'eia-Kea; the Ko'olau Foundation; Hawaii's Thousand Friends; Keep the North Shore Country; the Kuli'ou'ou/Kalani Iki Neighborhood Board; the 'Ilio'ulaokalani Coalition; the Ko'olauloa Neighborhood Board; and one hundred eight individuals. Testimony in opposition to this measure was submitted by the Department of the Attorney General; the Kuilima Resort Company; Villa Management at Turtle Bay Resort, LLC; Ocean Villas at Turtle Bay Resort, and seven individuals. The Department of Land and Natural Resources submitted comments.

The protection and preservation of Hawaii's historic and cultural heritage is of paramount importance for the State, thus, the State Historic Preservation Program under the Department of Land and Natural Resources was established for the purpose of conserving Hawaii's unique heritage. Despite these efforts, commercial and residential development still poses a threat to cultural and historic sites across the State, such as the current proposed expansion of the Turtle Bay Resort on Oahu.

The proposed expansion plans at the Turtle Bay Resort has been a source of great controversy on numerous levels, including concerns relating to the potential environmental, societal, and economic consequences. There is also a great concern over the effect the expansion plans will have to the historic and cultural sites in the area, including the Kahuku habitation area, the Kawela Bay and Kahuku Point archeological areas, the Punahoolapa Marsh, and the ahupua'a of Opana, Hana Kaeo, and Kahuku. Moreover, several Native Hawaiian burials sites and remains have been found and relocated since the development of the original and existing Turtle Bay Resort, and more are expected to be discovered when project construction commences.

Your Committee finds that preserving and protecting historic and cultural sites is important for future generations to enjoy, visit, and learn from these sites. Thus, strongly encouraging project developers to conduct a comprehensive historic and cultural preservation assessment and maintaining a minimum shoreline set back of seven hundred fifty feet in the Ko'olauloa district will provide further assurances that the historic and cultural sites in the area are protected and preserved.



Although there was overwhelming testimony in support of this measure, your Committee recognizes that the development plans for the Turtle Bay Resort have already been approved and the project developer is currently in the process of obtaining or has already obtained the necessary permits to complete the expansion plans. Your Committee further recognizes the strong legal concerns presented by the Department of the Attorney General, especially with respect to the Department's indication that this measure appears to single out one development in the Ko'olauloa District. Your Committee further finds that the language in this measure appears to be project-driven and that specific language referencing the developer and the project should be deleted from the measure.

Your Committee strongly believes that historic and cultural sites need to be preserved and protected, especially unmarked Native Hawaiian burial sites and remains, which have been discovered or are yet to be discovered along Hawaii's shoreline areas. Although your Committee would like to expand the scope of this measure to include a statewide shoreline setback program, your Committee is prevented from doing so due to the specific title of this measure. Your Committee further believes, however, that shoreline setback measures, emphasizing the importance of historic and cultural preservation assessments, and the protection and preservation of historic and cultural sites with respect to commercial or residential development plans is an important issue, and strongly encourages further discussion on these issues as this measure progresses through the legislative process.


Accordingly, your Committee has amended this measure by:

- (1) Deleting the references made to Oaktree Capital Management, LLC, and Turtle Bay Resorts to broaden the focus from the resort hotel area to the Ko'olauloa area;
- (2) Deleting the references made to Marconi Road and Kawela Stream to broaden the focus from that particular area to the Ko'olauloa area;
- (3) Inserting a effective date of July 1, 2050, to ensure further discussion on this issue; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and style.



As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 851, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 851, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land,
Agriculture, and Hawaiian
Affairs,



RUSSELL S. KOKUBUN, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WAH

Bill / Resolution No.:* <i>SB 851</i>	Committee Referral: <i>WAH</i>	Date: <i>2/21/07</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KOKUBUN, Russell S. (C)	<i>X</i>			
TOKUDA, Jill N. (VC)		<i>X</i>		
FUKUNAGA, Carol				<i>X</i>
HEE, Clayton	<i>X</i>			
SLOM, Sam		<i>X</i>		
TOTAL	<i>2</i>	<i>2</i>	<i>0</i>	<i>1</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>[Signature]</i>				
Distribution:	Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	

*Only one measure per Record of Votes