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Statement of
ABBEY SETH MAYER
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON JUDICIARY
Tuesday, March 31, 2009
4:00 PM
State Capitol, Conference Room 309

in consideration of
SB 468, SD 1, HD1
RELATING TO COASTAL ZONE MANAGEMENT.

Chair Karamatsu, Vice Chair Ito, and Members of the House Committee on Judiciary.

The Office of Planning (OP) opposes SB 468, SD1, HD1 Relating to Coastal Zone Management, in its present form.

OP administers Chapter 205A, HRS, the Coastal Zone Management (CZM) law. SB 468, SD1, HD1, proposes various amendments to Chapter 205A, HRS. It should be noted that Chapter 205A is the state's policy umbrella for land and water use activities, and its implementation is carried out by the network of state and county agencies obligated to the CZM objectives and policies. Hence, a policy change to Chapter 205A must be accompanied by a change to a functional statute to assure implementation. This omission must be corrected if implementation is to be assured. We have additional concerns with the bill.

1. Pages 3, 10, 20 and 26 of SB 468, SD1, HD 1, make various amendments pertaining to coastal hazards. We direct the committee to the language in Administration bill HB 1049 (companion SB 867) which was not heard. This bill provided an amended definition of "coastal hazards" that ensures that the term is used consistently, and avoids the redundant use of a list of coastal hazards throughout the chapter 205A, as follows:

   "Coastal hazards" include tsunami, hurricane, wind, storm, wave, sea level rise, flood, erosion, volcanic activity, earthquake, landslide, subsidence, and point and nonpoint source pollution.

2. Page 3, lines 4-8, in the section on coastal ecosystems, the proposed addition of "beaches" should be removed or should be replaced by the term "beach lands." Beaches are already addressed in the objective of beach protection. In addition, HD 1 proposes the inclusion of the terms "significant" and "environmental or ecological" in the coastal ecosystems objective. The intent and effect of these terms are unclear, and could be construed as a reference to HRS Chapter 343. Hence, they should be clarified or deleted.

3. Page 4, line 1, adds the phrase "planning for the development of" coastal resources. It is neither the role nor function of the CZM program to plan for development. Land use policy setting is the statutory functions of the Land Use Commission, the Board of Land and Natural Resources, and the county councils. Hence, the proposed amendment would generate a conflict with their statutes. The CZM program is already involved in the management of human activities that affect coastal resources, which is implicit in parts of the statute. Therefore, we do not see the value of the amendment to the program.

4. Page 4, lines 7-8 amends Sec. 205A-2(b)(9) by adding "coastal dunes" and "against coastal hazards" to the objective of beach protection. On the one side, protecting beaches against coastal hazards is an impractical task. There is no human activity that can prevent against natural phenomena. What is possible is the reduction of risk and damage to life and property, which is already addressed in the coastal hazards objective. On the other side, protecting dunes for public use and recreation, rather than as sensitive and vital coastal ecosystems, is an inappropriate objective. Coastal dunes are already protected under the objective Sec. 205A-2(b)(4), HRS, "Coastal ecosystems."

Furthermore, Section 171-151, HRS, defines "beach lands" to include dune systems. Therefore, all references to coastal dunes outside of the coastal ecosystems objective should be deleted.

5. Page 4, line 19: it is redundant to add "for the general public" to §205A-2(c)(1)(B). The existing objective on recreational resources clearly provides recreational opportunities to the public.

6. Page 5, line 4: We do not object to the addition of "coral reefs" as an example of coastal resources, although the existing objective and policy on coastal ecosystems already include "reefs" as a factor in preserving coastal ecosystems.

7. Page 7, lines 19-20: The amendments pertaining to public access to scenic resources are not necessary. Sec. 205A-2(c)(1)(B)(iii), (iv) and (v), HRS, already contain policies on public access which more comprehensively and effectively encompass public access.

8. Page 9, line 15: We do not object to the addition of "with consideration of sea-level rise" to permit reasonable long-term growth. The Administration bill HB 1049 (companion SB 867) provides an amended definition of "coastal hazards" that includes "sea level rise".

9. Page 9, lines 20-22: There is no specific reason to add "exposure to negative impacts related to sea-level rise." Adverse environmental effects include the effects of all coastal hazards.

10. Page 10, lines 15-17: We agree with housekeeping change.

11. Page 15, lines 6-8: We do not object to this amendment.

12. Page 18, lines 5-6: We do not object to this amendment.

13. Page 19, line 18 and page 20, line 4: The term "substantial" is replaced with "significant." We note that "significant effect" is defined in Chapter 343, HRS. We are concerned that there may be ramifications and unknown consequences in making this change, and we are uncertain of whether or not the intent of the change was meant to reference the Chapter 343 definition. The amendment should be deleted.

14. Page 20, lines 16-20 and page 21, lines 1-3: The proposals are redundant. The concerns are addressed in §205A-26(2)(B) -- "That the development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature."

15. Page 22, lines 10-16: The definition of "Authority" and "Department" are established in §205A-22, hence it is unnecessary for their inclusion in this section.

16. Page 25, lines 16-18, page 26 lines 1-21, and page 27, lines 1-6: there are several amendments pertaining to shoreline setbacks. We prefer the language in the Administration bill HB 1049 (companion SB 867). This bill contains language agreed upon by the four counties, because it provides the Counties flexibility in setting appropriate standards for setbacks. On Oahu, for example, there are numerous shoreline lots which are too narrow to support development applying a 40-foot shoreline setback.

Thank you for the opportunity to provide testimony on this bill. If there are any questions, I will be happy to respond.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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DEPUTY DIRECTOR

March 31, 2009

The Honorable Jon Riki Karamatsu, Chair
and Members of the Committee on Judiciary
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: SENATE BILL SB 468, SD1, HD1
Relating to Coastal Zone Management

The Department of Planning and Permitting (DPP) **supports** Senate Bill 468, SD1, HD1, relating to coastal zone management.

Numerous versions of this and related bills have been considered by the Legislature over the past few years, many of which we have opposed. However, the amendments made to this bill by the House of Representatives, in particular those relating to shoreline setbacks, and which are now contained in SB 468, SD1, HD1 are supportable.

We appreciate the attention given to our concerns regarding this bill, and can now recommend that Senate Bill 468, SD1, HD1 be approved. Thank you for this opportunity to comment.

Very truly yours,

for David K. Tanoue, Director
Department of Planning and Permitting

DKT: jmf
sb468sd1hd1-jpt.doc

Kyo-ya Hotels & Resorts, LP

March 30, 2009

Honorable Jon Riki Karamatsu
Honorable Ken Ito
Committee on Judiciary
House of Representatives
State Capitol
415 South King Street
Honolulu, Hawaii 96813

Re: S.B. No. 468, S.D.1, H.D.1 relating to Coastal Zone Management

Dear Chair Karamatsu, Vice-Chair Ito and Committee Members:

On behalf of Kyo-ya Hotels & Resorts, LP, thank you for the opportunity to testify with respect to Senate Bill No. 468, S.D. 1, H.D.1, relating to Coastal Zone Management, which is to be heard by your Committee on Judiciary on March 31, 2009.

S.B. No. 468, S.D.1, H.D.1, requires certain agencies to account for sea-level rise and minimize risk from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis, preserves public shoreline access, authorizes the counties to account for annual shoreline erosion rates and creates exception from shoreline setback rules for existing Waikiki beach structures and properties subject to Waikiki Beach Reclamation Agreement, to extent agreement conflicts with setback rules.

We support the intent of S.B. No. 468, S.D.1, H.D.1, and believe that appropriate modifications to the coastal zone management laws can benefit all Hawaii's residents, visitors and businesses. We also are appreciative of the amendments made in House Draft 1 by the House Water, Land and Ocean Resources Committee that recognize some unique and special characteristics of the Waikiki Beach area. As you may be aware, Kyo-ya is in the process of a multiyear project to upgrade the Sheraton Waikiki, Royal Hawaiian, Moana Surfrider and Princess Kaiulani hotels, three of which are located directly on Waikiki Beach and one of which is located directly across Kalakaua Avenue from the beach. As you know, these are extreme challenging economic times for our country, our state and for the local visitor industry. Nevertheless, we are committed to improving the quality of our properties because we believe this is vital to maintaining the attraction of Waikiki as a visitor destination.

SHERATON WAIKIKI HOTEL, Second Floor
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The potential ramifications of the changes being considered by this Committee in S.B. No. 468, S.D.1, H.D.1, and its House companion, are enormous and we are grateful that the committees to which these bills have been referred are carefully considering these measures.

As noted above, while Kyo-ya supports the intent of S.B. No. 468, S.D.1, H.D.1, we respectfully submit the following comments for your consideration:

- Section 3; HRS §205A-2(c)(5)(C)(iii). "*[c]oastal dependant development outside of presently designated areas*" should be permitted when "*the development is important to the State's economy*". However, to further require that such development also be important to the State's *infrastructure and utilities* would be problematic, as projects such as the restoration of Waikiki Beach – clearly important to the State's economy – might not qualify to the extent that such a project is unrelated to the State's infrastructure or the State's utilities.

- Section 3; HRS §205A-2(c)(9)(B) and (C). While it is important to prohibit the construction of private erosion protection structures seaward of the shoreline, an exception should be made for **beach restoration projects** such as the one which is currently planned for Waikiki Beach. A similar exception should be made for public coastal hazard-protection structures seaward of the shoreline.

- Section 7; HRS §205A-43(c). A portion of Waikiki Beach known as the "SurfRider-Royal Hawaiian Sector" is encumbered by a Waikiki Beach Reclamation Agreement, which was amended and supplemented by that certain **Surfrider-Royal Hawaiian Sector Beach Agreement** made as of May 12, 1965, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 5219, Page 181. These agreements provide for the construction, maintenance, preservation and restoration of Waikiki Beach as a man-made beach. Because the intended shoreline under these agreements is located well seaward of the existing shoreline, the shoreline setbacks in this section should not be applied to this portion of Waikiki Beach. The phrase "to the extent the duties, restrictions, and obligations under the agreement conflict with the shoreline setback established under this section" should be deleted because it is unclear and likely to lead to confusion and dispute.

- Section 8; HRS §205A-43.5(a)(2). The public hearing requirement should be waived for variance applications relating to the **protection of a legal structure costing more than $50,000**, where such structure is at risk of immediate damage from shoreline erosion or other coastal hazard. The bill currently proposes to

waive the public hearing requirement only for inhabited dwellings, but this is not broad enough to cover the numerous legal improvements which are not dwellings, such as the beach front hotels in Waikiki.

- Section 9; HRS §205A-45(d). Please see comment to Section 7, HRS §205A-43(c).

- Section 10; HRS §205A-46(a)(9). The bill already proposes to allow the granting of a variance for private facilities or improvements that may harden the shoreline. For similar reasons, a variance should also be allowed for "*private facilities or improvements that are mauka or landward of an existing hardened shoreline*".

Particularly in these fragile economic times, the changes proposed in S.B. No. 468, S.D.1, H.D.1, must be carefully considered and we thank you for your consideration of the foregoing.

Sincerely,

Kyo-ya Hotels & Resorts, LP

Ernest K. Nishizaki

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TESTIMONY OF MURRAY TOWILL
PRESIDENT
HAWAI`I HOTEL & LODGING ASSOCIATION
March 31, 2009

RE: SB 468 SD1 HD 1 Relating to Coastal Zone Management

Good afternoon Chairman Karamatsu and members of the House Judiciary Committee. I am Murray Towill, President of the Hawai`i Hotel & Lodging Association.

The Hawai`i Hotel & Lodging Association is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms and individuals. Our membership includes over 170 hotels representing over 47,300 rooms. Our hotel members range from the 2,680 rooms of the Hilton Hawaiian Village to the 4 rooms of the Bougainvillea Bed & Breakfast on the Big Island.

S.B. No. 468, S.D.1, H.D.1, requires certain agencies to account for sea-level rise and minimize risk from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis, preserves public shoreline access, and creates exception from shoreline setback rules for existing Waikiki beach structures and properties subject to Waikiki Beach Reclamation Agreement, to extent agreement conflicts with setback rules.

We support the intent of S.B. No. 468, S.D.1, H.D.1, and believe that appropriate modifications to the coastal zone management laws can benefit all Hawaii's residents, visitors and businesses. We also are appreciative of the amendments made in House Draft 1 by the House Water, Land and Ocean Resources Committee that recognize some unique and special characteristics of the Waikiki Beach area.

The following is a list of specific comments on the bill:

PAGE 10:

✓ Section 3; HRS §205A-2(c)(5)(C)(iii). "*[c]oastal dependant development outside of presently designated areas*" should be permitted when "*the development is important to the State's economy*". As drafted, the language could be interpreted to require that such development also be important to the State's *infrastructure and utilities*. A solution would be to replace the "and" with "or" in the last line.

PAGE 12 & 13:

✓ Section 3; HRS §205A-2(c)(9)(B) and (C). While it is important to prohibit the construction of private erosion protection structures seaward of the shoreline, an exception should be made for **beach restoration projects** such as the one which is currently planned for Waikiki Beach. A similar exception should be made for public coastal hazard-protection structures seaward of the shoreline.

PAGES 23 & 26:

✓ Section 7; HRS §205A-43(c) & Section 9; HRS §205A-45(d). In both of these sections, some exceptions language is developed for Waikiki. We support this language, but believe for clarity sake the word "and" linking the exceptions should be changed to "or". This will make it clear that both criteria do not need to be met to satisfy the exception.

PAGE 24:

✓ Section 8; HRS §205A-43.5(a)(2). We strongly recommend you not delete this provision. It's deletion would necessitate a public hearing when any structure other than a dwelling or major infrastructure is faced with immediate damage. This option needs to be available to all legal structures. The existing law has a $20,000 threshold it is not unreasonable to increase this to $50,000.

PAGE 27:

✓ Section 10 HRS 205A-46(a)(9). The bill already proposes to allow the granting of a variance for private facilities or improvements that may harden the shoreline. For similar reasons, a variance should also be allowed for "*private facilities or improvements that are mauka or landward of an existing hardened shoreline*"

Again, mahalo for this opportunity to testify.

OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

SB 468, SD 1, HD1, RELATING TO COATAL ZONE MANAGEMENT

House Committee on Judiciary

March 31, 2009 4:00 p.m. Room: 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** with amendments SB 468, SD 1, HD1, which requires certain agencies to account for sea-level rise and minimize risk from coastal hazards while also preserving public shoreline access and authorizing the counties to account for annual shoreline erosion rates. This bill also seeks to create an exception from shoreline setback rules for existing Waikïkï beach structures and properties subject to Waikïkï Beach Reclamation Agreement.

OHA is very supportive of the intent of this bill because we recognize that Hawai'i must prepare for the varied adverse effects of a changing climate. As an island state, we have the unpleasant duty of bearing the brunt of these global effects. We need to be forward-looking to ensure that we minimize these effects for future generations. As a member of the Hawai'i Ocean Resources Management Plan Working Group, we see first hand how urgently we need to strategize and add clarity to our current laws that will be used to deal with these coastal issues. We see this bill as a necessary step in that direction.

However, we do offer the following amendments:

We note that the additional language suggested in this bill for section 9(c) is so very general that the additional language essentially negates the intent of this section. Therefore, we suggest that the additional language on page 13, line 3, not be included so that the important concept of minimizing the construction of public coastal hazard-protection structures seaward of the shoreline remain.

OHA does not see the wisdom in creating a uniformed approach to a statewide problem and then creating exceptions and variances from it. Global climate change is uncaring of location. A rising sea will not recognize the proposed exemptions for

Waikïkï found in section 7(b)(c)(2) and section 9 (d)(1)(2) of this bill. As such, we suggest that this be corrected by removing this unreasonable exemption.

OHA also points out that the variance mentioned on page 26, line seven in section 9 (c)(1) is awkward. We support incentives to create innovative approaches towards this uniform threat. However, we again express severe concern over deviations from a statewide response in the form of variances in the face of a recognized threat that will affect shorelines and those fortunate enough on live on them regardless of design.

Therefore, OHA urges the Committee to PASS with amendments SB 468, SD 1, HB1. Thank you for the opportunity to testify.

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March 30, 2009

The Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 468, S.D. 1, H.D. 1 Relating to Coastal Zone Management

HEARING DATE: Tuesday, March 31 at 4:00 p.m.

Aloha Chair Karamatsu and Members of the Committee:

I am Myoung Oh, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **submits concerns** regarding S.B. 468, S.D. 1, H.D. 1 which 1) requires certain agencies to account for sea-level rise and minimize risk from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis, 2) preserves public shoreline access and authorizes the counties to account for annual shoreline erosion rates, and 3) creates exception from shoreline setback rules for existing Waikiki beach structures and properties subject to Waikiki Beach Reclamation Agreement, to extent agreement conflicts with setback rules.

HAR believes that the counties should be left the discretion to establish methods of determining their own shoreline requirements. Simply extending the shoreline setback, based on annual erosion rates or a fixed distance, may not work in all situations due to factors that are specific to the coastal lands in the different counties, including narrow lots or elevated plains and cliffs.

In addition, to the extent that this bill would also create many nonconforming lots, we feel that the counties should also exercise control over these issues. Kauai and Maui, as examples, have created reasonable regulations to allow private property owners some flexibility in protecting their property through variances or exceptions, and allow certain factors to be taken into consideration, including environmental assessments, hardship factors, and other conditions. In addition, Oahu is in the process of establishing methods of coastal erosion rates and hazard maps that can be used as a basis for new shoreline requirements.

In summary, we believe that coastal zone management decisions are best left with the individual counties to determine through ordinances, rules, and zoning, and in consideration of the counties' unique lands, uses, and island cultures. The models on Kauai and Maui are working, and HAR respectfully recommends that other counties be permitted to continue in their efforts to review studies, establish erosion rates criteria, and determine appropriate regulations relating to shoreline management.

Mahalo for the opportunity to testify.

For the Protection of Hawaii's Native Wildlife

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March 30, 2009

House Committee on Judiciary
Rep. Joey Manahan, Chair & Rep. Ken Ito, Vice Chair

Hearing: Tuesday, March 31, 2009; 4:00 P.M., Conference Rm. 325

Re: SB 468, SD1, HD1; Relating to Coastal Zone Management

Testimony in Support with Amendment

Chair Manahan, Vice Chair Ito, and members of the Committee on Judiciary. My name is George Massengale and I am a long time member of the Hawaii Audubon Society. During session I serve as their Legislative Analyst. Thank you for the opportunity to submit testimony in support of SB 468, SD1, HD1, which if enacted, would require certain agencies to account for sea-level rise and minimize risk from costal hazards such as erosion, storm inundation, hurricanes, and tsunamis. In addition it preserves public shoreline access and authorizes the counties to account for annual shoreline erosion rates. It also would create exceptions from shoreline setback rule in Waikiki.

The Hawaii Audubon Society was founded in 1939, and has over 1,500 members statewide. The Society's primary mission is the protection of Hawaii's native birds, wildlife and habitats. We believe that this is an important measure for long range planning to protect our eroding shorelines and if properly amended could address sea level rise as a result of global warming, the result of which threatens our coastal habitats which are home to various endangered shore birds, sea mammals such as the Hawaiian monk seal, and green turtles.

Our current statewide setback is 20 feet and is totally inadequate. The intent of shoreline setbacks is to establish a coastal-hazard buffer zone to protect beach-front development from high-wave events and coastal erosion. Adequate setbacks allow the natural erosion and accretion cycles to occur and help maintain lateral beach access. Furthermore, setbacks provide open space for the enjoyment of the natural shoreline environment.

We would strongly recommend that this bill be amended to set the minimum setback at 60 feet. A setback of 60 feet would not only address natural erosion rates but would offer additional protection from sea-level-rise and storm inundation. Finally it would encourage beach nourishment thus increasing beach and coastal habitat.

Thank you for opportunity to testify here today.

Sincerely,

George Massengale, JD
Legislative Analyst

Sierra Club
Hawai'i Chapter
PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON JUDICIARY

March 31, 2009, 4:00 P.M.
(Testimony is 6 pages long)

TESTIMONY IN SUPPORT OF SB 468, HD1, WITH AMENDMENTS

Aloha Chair Karamatsu and Members of the committees:

The Sierra Club, Hawai`i Chapter, with 5500 dues paying members statewide, supports an amendment version of SB 468, increasing the protection of Hawaii's coastlines from climate change and erosion. To ensure this bill actually protects our shorelines from erosion, instead of simply adding additional verbiage, we suggest reverting back to the draft proposed by the Senate or including the amendments below.

Our current statewide setback—minimum of 20 feet—is dated and dangerous. Given the rapidly expanding information base of coastal processes in the state, plus new knowledge pertaining to global warming and the impacts of sea level rise on Hawaii's coasts, we believe the legislature should greatly increase the minimum shoreline setback for new coastal developments statewide and require the counties to adopt a parcel-by-parcel setback formula that is based on the historical erosion rate of that particular area. Sometimes "one-size" doesn't fit all.

Managed Retreat

Given the realities of sea level rise caused by global climate change and the accompanying loss of shoreline-protecting coral reef, a policy of "managed retreat" makes the most sense to protect private property, taxpayers, and public shoreline. Setting a significant setback from the shoreline for new construction or redevelopments is the best managed retreat strategy for Hawai'i.

The threat of rising sea level is not speculative. The recent acceleration of melting in Greenland, other arctic areas, and Antarctica has shocked climatologists globally. In 2007 the Arctic ice cap melted to half what it was just four years ago. According to the United Nations, data from the world's largest

glaciers in nine mountain ranges indicate that between the years 2004-2005 and 2005-2006 the average rate of melting and thinning more than doubled. *Nature Geoscience* reported in January of 2008 that sea levels may rise five feet or more this century. Rising sea level and its related impacts will literally change the landscape of Hawai'i as we know it. We will have to redraw the map of our islands.

For example, just a few weeks ago (March 19, 2009), a house on Kauai collapsed and washed out to sea due to "due to erosion that reportedly began after the construction of a neighboring seawall which was built nearly 30 years ago in order to protect adjacent properties."[1] A picture is below. It is highly likely that stories like these will become more and more common as the impact of shoreline erosion increase.

Significant Shoreline Setback Not Without Precedent

Setting a significant shoreline setback is not without precedent. The County of Kaua'i recently adopted an ordinance for shoreline setback that is the strongest in the state (and likely the nation). The new law requires dwellings to be set back 70 times the erosion times the annual coastal erosion rate plus 40 feet. This aims to protect coastal structures against 70 - 100 years of erosion. Pushing buildings back from eroding waterlines, the law says, is critical to the protection of life and property, the mitigation of coastal hazards, and the preservation of coastal resources.

International examples of managed retreat and related measures as adaptation to sea-level rise include the following:

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[1] http://kauaiworld.com/articles/2009/03/19/news/kauai_news/doc49c2018cc6d7e747698179.txt

- **Aruba and Antigua:** Setback established at 50 m (~164 feet) inland from high-water mark.
- **Barbados:** A national statute establishes a minimum building setback along sandy coasts of 30 m (~100 feet) from mean high-water mark; along coastal cliffs the setback is 10 m (~33 feet) from the undercut portion of the cliff.
- **Sri Lanka:** Setback areas and *no-build zones* identified in Coastal Zone Management Plan. Minimum setbacks of 60 m (~200 feet) from line of mean sea level are regarded as good planning practice.
- **Australia:** Several states have coastal setback and minimum elevation policies, including those to accommodate potential sea-level rise and storm surge. In South Australia, setbacks take into account the100-year erosional trend plus the effect of a 0.3-m sea-level rise to 2050. Building sites should be above storm-surge flood level for the 100-year return interval.

Other US coastal states have taken a protective approach to shoreline setback as well.

In Maine, where local officials can determine such setback requirements, 75 ft. is the minimum; however, that's not necessarily adequate in all cases. In 1995, for example, the top edge of a bluff shoreline moved inland about 200 ft. in just a few hours, destroying two homes and leaving two others in jeopardy.

In North Carolina, the setback is measured landward from the line of stable natural vegetation nearest the sea, usually near the base of the frontal dune system. All single-family homes and buildings of 5,000 square feet or smaller, as well as their septic systems, must be located 30 times the historical, long-term erosion rate from this line with a minimum setback of 60 ft. For larger buildings, the minimum setback is 120 ft.

Rhode Island rules also require a setback equal to 30 times the annual erosion rate for residential structures. Theoretically, that would allow a homeowner 30 years before a house would be threatened—or enough time to pay off the mortgage. The setback for commercial property is 60 times the annual erosion rate.

Suggested Amendments

The Sierra Club respectfully asks that SB 468 be amended in the following ways.

First, we believe that in addition to the 40-foot minimum setback, the counties should be required to adopt ordinances that establish an additional setback that is based on the annual erosion rate. It should not be optional. Maui and Kaua'i have already adopted such ordinances. The state should direct all the counties to adopt such parcel-by-parcel erosion rates by a certain date (perhaps January 1, 2010). Page 22, lines 20 – 22, should be amended as follows:

> **Setbacks along shorelines are established of not less than ~~twenty~~ forty feet. ~~and not more than forty feet inland from the shoreline.~~**

Second, the Sierra Club believes that the erosion rate-based standard should be set at 100 times the annual erosion rate. This formula would better account for accelerating erosion and sea level rise, as the annual erosion rate today is likely less than what it will be 10 or 20 years hence. Page 23, lines 1 - 3 should read:

> **...adopt rules pursuant to chapter 91, prescribing procedures for determining the shoreline setback line <u>of not less than the average annual erosion rate based on a one hundred-year projection, in addition to the minimum distance established above.</u>**

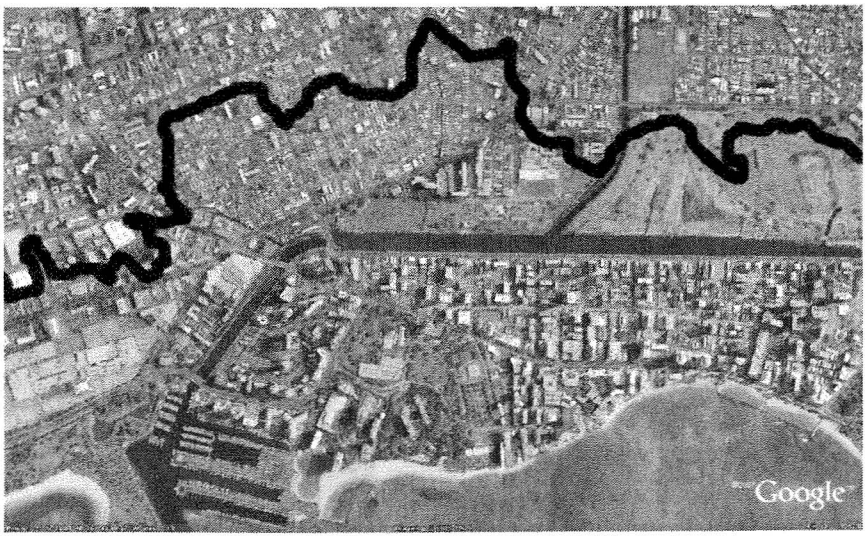
Third, it has been our experience that some "temporary emergency protection of a legal inhabited building" have lasted for years, thus limiting beach access and creating a *de facto* hardening of the beach. We suggest amendment page 25, line 1 to state:

> **Temporary emergency protection<u>, of no more than one year in duration</u>, of a legal inhabited dwelling or major infrastructure; provided the structure is at risk of immediate damage from shoreline erosion or other coastal hazard** . . . .

Fourth, shoreline erosion should be considered for all future construction, not merely "where appropriate." There is no occasion where consideration of erosion is not appropriate, ***but it can be certain that the counties will seize upon this language to disregard a plain directive.*** Areas built on cliffs, for example, would not observe any shoreline erosion and, thus, the coastal erosion calculation would have no impact on the shoreline setback. Accordingly the phrase ", where appropriate," should be struck from page 25, line 17.

> **The shoreline setback shall use a method including the average annual shoreline erosion rate~~, where appropriate,~~ in addition to the minimum distance established in section 205A-43.**

Fifth, reducing the current minimally required setback in Waikiki seems antithetical to the intent of this bill and to a managed retreat from the shoreline. Take a look at the picture below, which demonstrates the projected range of a one-meter sea level increase. Do we really want to encourage additional growth ***closer*** to shoreline?



Further, it should be noted that the proposed language would run afoul of constitutional protections for the public trust land located within the shoreline. Rather than lowering standards that have been in existence since 1986, we suggest striking subsection (d) on pages 26 and 27, lines 18-21 and 1-6.

> ~~**(d) Any shoreline setback adopted by a county pursuant to this section shall not apply to:**~~
>
> ~~**(1) Any structure on Waikiki beach built as of the effective date of this Act; and**~~
>
> ~~**(2) Properties subject to the Waikiki Beach Reclamation Agreement dated October 19, 1928, between the Territory of Hawaii and beachfront property owners in Waikiki to the extent the duties, restrictions, and obligations under the agreement conflict with the shoreline setback established under this section."**~~

Sixth, private facilities that permanently fix the shoreline (i.e. seawalls) should be allowed only when an overwhelming public interest is served. Given rising sea levels and increased erosion, policymakers and planners will have to start making extremely tough choices regarding protection of private structures, shoreline, and Hawaii's beaches. Allowing seawalls simply because a homeowner will experience "hardship"—however defined through rulemaking—will likely result in more and more of Hawaii's shoreline being hardened by seawalls and the beaches gone. This is not a preferred future, either for residents, visitors, or the environment. Therefore, the language on page 28, paragraphs 8 and 9, should be amended as follows:

> **(8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that the authority also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area <u>and that such facilities or improvements are clearly in the public interest;</u>**
>
> **(9) Private facilities or improvements that may harden the shoreline; provided that the authority:**
>
> **(A) Finds that shoreline erosion is likely to cause significant hardship to the applicant if the facilities or improvements are not allowed within the shoreline area,**
>
> **(B) ~~Considers~~ <u>Finds that</u> ~~whether~~ the activity will <u>not</u> alter beach-quality sediment availability;**
>
> **(C) Finds that the facilities or improvements do not limit or severely reduce adequate public access or public shoreline use; ~~and~~**

(D) Finds that the private facilities or improvements are clearly in the public interest; and

(E) Imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or

As amended, SB 468 would begin the process of preventing inappropriate construction too close to the shoreline. When dwellings and buildings are built too close to the shore, beach-destroying seawalls are often requested when erosion threatens to undermine the structures. We need to start the rationale step of developing a scientific based management plan that slowly causes development to retreat away from the shoreline and limits the hard choices we need to make in the future.

Thank you for the opportunity to testify.

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HOUSE OF REPRESENTATIVES
25th LEGISLATURE
REGULAR SESSION of 2009

COMMITTEE ON JUDICIARY
Representative Jon Riki Karamatsu, Chair

3/31/09

HB 468, SD 1, HD 1
Relating to Coastal Zone Management

Chair Karamatsu and Members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels, to offer comments on this bill.

Our comments are in regards to the section of this bill that refers to Waikiki. Below are three suggested changes we believe will clarify and simplify how this would or would not apply to structures and properties in the Waikiki area.

Page 23. Line 18.

"(1) Any structure **on property abutting the shoreline or beach area in Waikiki, from the intersection of Kalakaua Avenue and Kapahulu Avenue to the Ala Wai Canal, which exists, or for which a building permit has been issued**, as of the effective date of this Act; and"

Currently there is no definition in the statues of what is "Waikiki Beach." This change will clarify the excluded area in Waikiki, by referencing the bisecting streets rather than any other references, such as the City Ordinance defining the Waikiki area in the Waikiki Special District, since that could be subject to change at the local level.

Page 23, line 20

"(c)(2) Properties **abutting beaches that are** subject to the Waikiki Beach Reclamation Agreement dated October 19, 1928, between the Territory of Hawaii and beachfront property owners in Waikiki, to the extent the duties, restrictions, and obligations under the agreement conflict with the shoreline setback established under this section."

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This language accounts for subsequent amendments that have been made to the original Waikiki Beach Reclamation Agreement over the years, with the individual abutting landowners.

Page 25, line 1

"(2) Temporary emergency protection of a legal **structure or improvement**; provided the structure **or improvement** is at risk of immediate damage from shoreline erosion or other coastal hazard; or"

This suggested change would simplify the understanding of which type of structure would be covered under this section. If the structure is legal, by having a valid and legal building permit, it is covered by temporary emergency protection. If it does not, it cannot be covered. Under the current language in this bill, a structure such as a swimming pool, would not qualify.

Mahalo for allowing me to testify.

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WAIKIKI IMPROVEMENT ASSOCIATION

Statement of
Rick Egged, President, Waikiki Improvement Association
Before the
HOUSE COMMITTEE ON JUDICIARY
Monday, March 31, 2009
4:00 PM
State Capitol, Conference Room 309
in consideration of

SB 468, SD1, HD1
RELATING TO COASTAL ZONE MANAGEMENT

Good afternoon Chair Karamatsu, Vice Chair Ito and members of the Committee:

I am Rick Egged testifying on behalf of the Waikīkī Improvement Association. WIA is a nonprofit organization representing 150 leading businesses and stakeholders in Waikīkī.

S.B. No. 468, S.D.1, H.D.1, requires certain agencies to account for sea-level rise and minimize risk from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis, preserves public shoreline access, authorizes the counties to account for annual shoreline erosion rates and creates exception from shoreline setback rules for existing Waikiki beach structures and properties subject to Waikiki Beach Reclamation Agreement, to extent agreement conflicts with setback rules.

WIA supports the intent of S.B. No. 468, S.D.1, H.D.1 and we appreciate the consideration of the special circumstances present in Waikīkī. However, we have concerns regarding the language of the bill and fear that it would not achieve its intent without some modification. Particularly the reference to Waikīkī Beach which should defined.

As the committee is aware this bill can have a major impact on future shoreline development and needs to be carefully considered. With investment and construction facing very difficult financial challenges there must be a careful balance between economic and environmental concerns.

WIA would be happy to work with the committee on language to modify the bill.

Thank you for this opportunity to provide these comments.