

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

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DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION  
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COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
JUDICIARY

Tuesday, February 28, 2017  
2:00 PM

State Capitol, Conference Room 325

In consideration of  
HOUSE BILL 437, HOUSE DRAFT 1  
RELATING TO COASTAL ZONE MANAGEMENT

House Bill 437, House Draft 1 proposes to prohibit variances for installation of shoreline hardening (e.g., seawalls) without a public hearing and demonstrating that the shoreline hardening structure is necessary to protect an existing legal object, structure, or activity from damage due to seawater inundation or shoreline erosion, and no reasonable alternatives exist. **The Department of Land and Natural Resources (Department) offers the following comments and suggested amendments.**

It is the mission of the Department to manage public lands and ocean resources, including beaches throughout the State. The Department is very much at the forefront of addressing impacts related to coastal erosion and beach loss in Hawai'i. Beaches are central to our culture and economy, yet our beaches are being lost at alarming rates due to natural processes and human impacts, threatening coastal ecosystems, alongshore public access, and upland development.

When shore-front property, homes, and infrastructure are threatened by coastal erosion and flooding, the Department often faces intense pressure from land owners to permit shoreline protection such as seawalls and rock revetments, even though shoreline armoring is discouraged by Chapter 205A, Hawaii Revised Statutes (HRS), Department administrative rules, and county rules. The science is clear that installing coastal armoring on a chronically eroding beach leads to beach narrowing and loss and often leads to increased erosion to neighboring property.

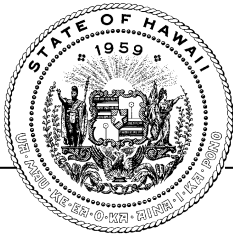
The Department respectfully offers the following comments and suggested amendments:

Page 6, line 17 through page 8, line 9 amends Section 205A-46, HRS, by adding a subsection (d) to add requirements for granting a variance for the construction of a shoreline hardening structure. The Department believes that any amendments to Section 205A-46, HRS, should strengthen and clarify the existing conditions in subsection (c) for granting a variance. In addition, the Department believes the burden should be on the applicant and not the government authority, to provide a thorough assessment and comparison of impacts, feasibility, and cost of alternatives to shoreline hardening. The Department recommends amending the proposed addition to Section 205A-46(d), HRS, as follows (recommended language to be deleted are bracketed and stricken; recommended language to be added are underscored; amendments highlighted):

(d) No variance shall be granted to allow for the construction of a shoreline hardening structure that will artificially fix the shoreline, including a seawall, revetment, or groin, unless the applicant demonstrates that the shoreline hardening structure is necessary to protect an existing legal object, structure, or activity from damage due to ~~seawater inundation or~~ shoreline erosion and the object, structure, or activity cannot reasonably be protected by relocating it outside of the shoreline area. In determining whether a variance for a shoreline hardening structure may be approved, the applicant shall provide a thorough assessment of and the authority shall consider the following:

- (1) The feasibility and cost of relocating the relevant structures, objects, or activities outside of the shoreline area;
- (2) The likelihood and severity of damage that will occur if the shoreline hardening structure is not constructed;
- (3) The likelihood and severity of adverse impacts to beach processes, adjoining shoreline areas, and the natural environment if the shoreline structure is constructed;
- ~~(3)~~ (4) The ~~availability~~ feasibility and cost of alternative means including but not limited to beach nourishment to protect the relevant objects, structures, or activities;
- ~~(4)~~ The shoreline hardening structure as the only reasonable alternative to protect relevant structures, objects, or activities from damage due to shoreline erosion;
- (5) The nature and scope of valued cultural and historical resources in the seaward areas that may be impacted by shoreline erosion resulting from the installation of a shoreline hardening structure, impact to any associated native Hawaiian traditional and customary practices, and the feasibility of action that may be taken to protect the resources and practices; and
- (6) The diminution of safe lateral public access and enjoyment of shoreline area resulting from the shoreline hardening structure, and conditions, including but not limited to public access easements, that may be required to mitigate any such diminution.

Thank you for the opportunity to comment on this measure.



# OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE  
GOVERNOR

LEO R. ASUNCION  
DIRECTOR  
OFFICE OF PLANNING

Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**HOUSE COMMITTEE ON JUDICIARY**  
February 28, 2017  
2:00 PM  
State Capitol, Conference Room 325

in consideration of  
**HB 437, HD1**  
**RELATING TO COSTAL ZONE MANAGEMENT.**

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary.

HB 437, HD1 prohibits variances for installation of shoreline hardening structures in shoreline areas, unless a public hearing is held, and the applicant demonstrates that the shoreline hardening structure is necessary to protect an existing legal object, structure, or activity from damage due to seawater inundation or shoreline erosion, and no reasonable alternative locations exist.

The Office of Planning (OP) supports HB 437, HD1, and respectfully offers the following comments on this measure:

1. Page 2, lines 8-11, HB 437 amends Hawaii Revised Statutes (HRS) § 205A-43.5(a) by adding a condition to waive a public hearing for action on a variance application. OP supports that no public hearing shall be waived for action on a variance application for the construction of a shoreline hardening structure that will artificially fix the shoreline.
2. HB 437, HD1 amends HRS § 205A-46 to add the requirements to approve a variance application for a shoreline hardening structure by adding subsection (d). OP believes the requirements to approve a variance application have been included in HRS §§ 205A-46(a), (b) and (c).

Pursuant to HRS § 205A-2(c)(9), the purpose of shoreline setbacks is to locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline process, and minimize loss of improvements due to erosion. A shoreline setback variance is an exception to the prohibition of structures or activities within the shoreline area under HRS Chapter 205A. No variance application for a shoreline hardening structure shall guarantee an approval. It would be appropriate

for the Hawaii Coastal Zone Management Law to avoid the following statement as proposed by HB 437, HD1, page 6, lines 17-21, and page 7, lines 1-4:

*No variance shall be granted to allow for the construction of a shoreline hardening structure that will artificially fix the shoreline, including a seawall, revetment, or groin, **unless** [emphasis added] the applicant demonstrates that the shoreline hardening structure is necessary to protect an existing legal object, structure, or activity from damage due to seawater inundation or shoreline erosion and the object, structure, or activity cannot reasonably be protected by relocating it outside of the shoreline area.*

Pursuant to HRS § 205A-5, all agencies shall enforce the coastal zone management objectives and policies, which include the requirements to protect shoreline public access and historical resources, as proposed by HB 437 HD1 to determine whether a variance application for a shoreline hardening structure may be approved. OP recommends amending HRS § 205A-46 by adding subsection (d) specifically for action on a variance application for a shoreline hardening structure, to read as follows:

(d) A variance may be granted to allow for the construction of a shoreline hardening structure that will artificially fix the shoreline, including a seawall, revetment or groin, if the authority finds in writing, based on the record presented:

- (1) The likelihood and severity of damage that will occur if the shoreline hardening structure is not constructed;
- (2) The feasibility and cost of relocating the relevant structures, objects, or activities outside of the shoreline area;
- (3) The availability of alternative means to protect the existing legal structures, objects, or activities; and
- (4) The shoreline hardening structure as the only reasonable alternative to protect the existing legal structures, objects, or activities from damage due to shoreline erosion.

Thank you for the opportunity to testify on this measure.



**HB437 HD1**  
**RELATING TO COASTAL ZONE MANAGEMENT**  
House Committee on Judiciary

February 28, 2017

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **SUPPORT** HB437 HD1. **This bill would provide a layer of public accountability and regulatory oversight over seawall proposals that may unnecessarily erode away our culturally, economically, and socially invaluable beaches and shoreline areas.**

**Hawai'i's beaches and shoreline areas provide numerous benefits to the Native Hawaiian community and the public that are critical to our cultural values and kama'āina way of life.** Access to the shoreline and the resources in the nearshore environment is critical to Native Hawaiian cultural perpetuation and constitutionally-protected traditional and customary gathering practices. Moreover, our beaches and shoreline areas provide a place to bond with 'ohana and friends, help to foster positive youth development and an early appreciation for our natural resources, and provide for a variety of recreational activities, such as surfing and fishing, that have been staples of local life for generations. Our beaches are also a driving force for our economy, as a key attraction for tourists visiting our islands. Accordingly, our laws have repeatedly recognized the public nature of our shoreline areas and the right of the public to access the shoreline, and OHA has also always been a strong advocate for shoreline access in Hawai'i.

**Unfortunately, poor planning has resulted in the proliferation of seawalls that have and continue to erode away much of our beaches and shoreline areas, cutting off lateral shoreline access, and undermining a cultural and socioeconomic foundation of our islands.** While at times necessary to protect property and infrastructure, seawalls are notorious for their documented contribution to the loss of beaches throughout the State. For example, an estimated 25% of the length of beaches on O'ahu has been permanently lost due to seawalls and shoreline hardening, along with many miles of shoreline on Maui.<sup>1</sup> In many areas, such beach loss has completely precluded safe lateral access along the shoreline, eliminating any opportunity for cultural or public use. Notwithstanding the clear impact of seawalls on our shoreline areas, however, the threat of sea level rise and adjacent shoreline loss due to existing seawalls may motivate coastal landowners to seek

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<sup>1</sup> Charles Fletcher, et. al., *Chapter 9: Beach Erosion 16*, in ON THE SHORES OF PARADISE (2010), available at <http://www.soest.hawaii.edu/coasts/publications/shores/>.

the installation of new seawalls for their own properties, particularly where buildings or infrastructure have been placed too close to the ocean.

**This measure will provide an increased level of public accountability and regulatory oversight in the proposed installation of new seawalls.** OHA understands that the public hearing and variance approval standards and findings mandated in this measure will help to ensure that seawalls are only used when absolutely necessary, to protect a legally-installed structure that cannot be moved further inland. OHA also understands that this measure would allow for conditions to be placed on the construction of any new seawalls, to mitigate the impacts of resulting shoreline loss to lateral access and Native Hawaiian traditional and customary practices. Accordingly, OHA appreciates and supports this measure, as a proactive means to mitigate any further loss of our culturally and socioeconomically invaluable beach and shoreline areas.

Therefore, OHA urges the Committee to **PASS** HB437 HD1. Mahalo nui loa for the opportunity to testify on this measure.



Testimony by:  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 28, 2017  
2:00 p.m.  
State Capitol, Room 325

**H.B. 437, H.D. 1  
RELATING TO COASTAL ZONE MANAGEMENT**

House Committee on Judiciary

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The Department of Transportation (DOT) **supports** the intent of this bill which prohibits construction of seawalls in shoreline areas without a public hearing and a showing that the seawall is necessary to protect an existing legal object, structure, or activity from damage due to seawater inundation or shoreline erosion and no reasonable alternatives exist.

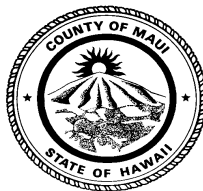
DOT seeks clarification on the revised processes in the bill. DOT already performs the processes the bill seeks to require throughout its environmental clearances for any shoreline protection process. DOT believes that these processes fulfill the intent of the public hearing requirement in this bill. DOT believes that the public comment period held as part of the environmental process satisfy the requirement of this bill. DOT believes that additional hearings outside of the public comment process already required in the environmental process are not necessary as they would be duplicative, unnecessarily require the use of additional resources, and require increased time for project development.

DOT also seeks clarification on the feasibility of alternatives. DOT already performs feasibility studies as part of the environmental process. Through these processes, DOT determines feasible alternatives and the preferred alternative, based on the project purpose and need, environmental impacts, public comment, available resources, and mission priorities. DOT believes that the feasibility analysis and preferred alternative selection required in the environmental process satisfy the requirement of this bill. DOT believes that additional feasibility analysis outside of the those already required in the environmental process are not necessary as they would be duplicative, unnecessarily require the use of additional resources, and require increased time for project development.

In emergency events, we assume that these requirements can be waived to allow DOT to perform timely roadway restoration and protection actions to ensure that connectivity is maintained for the people of Hawaii, and preserving public health and safety.

Thank you for the opportunity to provide testimony.

ALAN M. ARAKAWA  
MAYOR



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**OFFICE OF THE MAYOR**  
Ke`ena O Ka Meia  
COUNTY OF MAUI – Kalana O Maui

February 27, 2017

**LATE**

TESTIMONY OF ALAN M ARAKAWA  
MAYOR  
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

Tuesday, February 28, 2017  
2:00 pm - Conference Room 325

HB 437, HD1 RELATING TO COASTAL ZONE MANAGEMENT.

Honorable Scott Y. Nishimoto, Chair  
Honorable Joy A. San Buenaventura, Vice Chair  
Honorable Members of the House Committee on Judiciary

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Thank you for this opportunity to COMMENT on HB437, HD1.

The Maui County Department of Planning and the Mayor's office agrees with the testimony submitted by DLNR Chairperson Suzanne D. Case.

Under (3)(d), we respectfully requests that this bill should also require the applicant to recognize, examine, and document, as part of an environmental assessment (HRS Chapter 343) the likely environmental impacts of the proposed seawall or revetment to the immediate ecosystem (as defined by the regional beach cell) and to neighboring properties. Unfortunately, Maui County has many examples of seawalls and shoreline revetments that create environments that a) eliminate beaches and shoreline access, b) cause flanking-erosion end effects to neighboring properties which moves the problem to the next property, and c) encroach onto public trust conservation lands at the shoreline to protect at-risk development. . From our direct experience, we recommend the following language changes, in order to both clarify and strengthen Bill H. B. No. 437, in section 205A-46 Variances. (d):

- 1) Eliminate the phrase "the authority shall consider" from the bill and replace with "the authority shall require the applicant to fully explore to the satisfaction of the authority". It is critical to change this language – Maui has direct negative experience with this conditional language where the applicant has "considered" the condition.
- 2) Add a new (d)(3) to read, "The likelihood and likely severity of environmental impacts to the ecosystem as well as to neighboring properties;"
- 3) Move the existing (d)(3) down as "(d)(4)". Alter the new section (d)(4) from "The availability of alternate means to protect the relevant objects, structures, or activities" to



now read, “The availability of alternate means to protect the relevant habitable structures, to include beach nourishment or beach restoration through the conduct of offshore sand surveys as part of the environmental assessment process.” (This language emphasizes beach nourishment as a required alternative to explore along with relocation);

- 4) From Maui’s planning experience, categorically including “objects and activities” along with structures is problematic in that the language allows for subjectivity from the developer’s/owner’s point of view to protect most anything at the shoreline, to the detriment of the coastal zone. Otherwise, included “structures, objects, and activities” must be clearly defined. The Department prefers that only “structures” be defined and limited to “habitable structures”, as opposed to other structures, objects, and activities such as cabanas, swimming pools, shuffle board courts, sidewalks, trees, landscaped lawns which may become eroded.

Finally, Maui’s planning direction for the future is to limit seawall construction as the last resort and prefer that applicants for seawalls or revetments fully explore, as part of an environmental assessment, both the relocation option as well as the beach nourishment option, to include exploration for available offshore sand sources as part of an environmental assessment. From our direct experience, seawalls are not the answer in this era of sea level rise. The County of Maui Planning Department is managing 21 failed seawalls, including four more documented seawall failures in January 2017 alone. In addition, environmental impacts of seawalls are significant and documented to neighboring properties, causing a domino effect to neighbors in the same beach cell where a beach exists as well as impactful to shoreline access. Maui’s west side alone has experienced 15 failed seawalls since 2009, including a recent tall seawall collapse onto a beach in Keonenui Bay, Napili --these seawall failures are accelerating. From Maui’s experience, sea level rise, combined with chronic coastal erosion and episodic storms, temporarily diminish existing beaches which become further degraded when shoreline development hardens the shoreline to protect their threatened investments, even with temporary engineered sandbag revetments. The environmental impacts of seawalls to the coastal ecosystems and shorelines of Maui are well documented. Maui has lost 4.2 miles of sandy shoreline over the past century according to the US Geological Survey and University of Hawaii School of Oceanography and Earth Science and Technology 2015 study, entitled, “National Assessment of Shoreline Change: Historical Shoreline Change in the Hawaiian Islands.” Maui is representative of all the Hawaiian Islands, where our few remaining beach cells are becoming even more overcrowded as we eliminate beaches by hardening shorelines to protect threatened development.

Sincerely,

Alan M. Arakawa  
Mayor, County of Maui

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2017 10:06 AM  
**To:** JUDtestimony  
**Cc:** scoleman@surfrider.org  
**Subject:** Submitted testimony for HB437 on Feb 28, 2017 14:00PM

**HB437**

Submitted on: 2/27/2017

Testimony for JUD on Feb 28, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Stuart Coleman	Surfrider Foundation	Support	No

Comments: Aloha, Chairs and Committee Members, As the Hawaii Manager of the Surfrider Foundation, I am writing in strong support of HB 437. This common sense bill reduces the risk of homeowners throwing up sea walls without following proper procedures. Sea walls and armoring the coastline cause even more damage and erosion and can severely impact neighbor's homes. Mahalo for your consideration. Aloha, Stuart Coleman Hawaii Man., Surfrider Foundation 2927 Hibiscus Pl., Hon., HI 96815

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**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 28, 2017 1:03 PM  
**To:** JUDtestimony  
**Cc:** rbergstrom@surfrider.org  
**Subject:** \*Submitted testimony for HB437 on Feb 28, 2017 14:00PM\*

**HB437**

Submitted on: 2/28/2017

Testimony for JUD on Feb 28, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rafael Bergstrom	Surfrider Foundation Oahu Chapter	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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