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Statement of
LEO R. ASUNCION
Planning Program Administrator, Office of Planning
before the
**SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT
& WATER AND LAND**
Monday, February 11, 2019
2:45 PM
State Capitol, Conference Room 224

in consideration of
SB 1113
RELATING TO COASTAL ZONE MANAGEMENT.

Chairs Gabbard and Kahele, Vice Chairs Ruderman and Keith-Agaran, and Members of the Senate Committees on Agriculture and Environment & Water and Land.

The Office of Planning (OP) respectfully offers comments on SB 1113, which proposes various amendments to HRS Chapter 205A, including amendments on the CZM objectives and policies, special management area guidelines, and shoreline setbacks, in response to the inadequacies of the current CZM policies and regulations with respect to beach protection, beach access, and beach ecosystems, due to sea level rise and other natural and human impacts.

1. To ensure clarity and consistency throughout the Chapter relating to coastal hazards, adding the definition of “Coastal hazards” to HRS § 205A-1
Definitions as follows:
"Coastal hazards" includes tsunami, hurricanes, wind, waves, storm surges, high tide, flood, erosion, sea level rise, subsidence, and point and nonpoint source pollution.
2. **Page 7, lines 1-4**, the OP recommends amending HRS § 205A-2(b)(6) Coastal hazards as follows:
(6) Coastal hazards;
(A) Reduce hazard to life and property from [~~tsunami, storm waves, stream flooding, erosion, subsidence, and pollution~~] coastal hazards.
3. **Page 7, lines 12-15**, the OP recommends amending HRS § 205A-2(b)(9) Beach protection by replacing the term “ecosystem services” with “benefits of coastal ecosystems”, with the language for the beach protection objective, as follows:
(9) Beach protection;

- (A) Protect beaches and coastal dunes for public use and recreation, and benefits of coastal ecosystems, and as natural barriers to coastal hazards; and
 - (B) Coordinate and fund beach management and protection.
4. **Page 8, lines 9-19**, the OP recommends amending HRS § 205A-2(c)(1)(B)(ii) by replacing the term “replacement” with “restoration” as follows:
- (ii) Requiring [~~replacement~~] restoration of coastal resources [~~having~~] that have significant recreational and ecosystem value including, but not limited to coral reefs, surfing sites, fishponds, [~~and~~] sand beaches, and coastal dunes, when [~~such~~] these resources will be unavoidably damaged by development; or requiring [~~reasonable~~] monetary compensation to the State for recreation when [~~replacement~~] restoration is not feasible or desirable;
5. For consistency with OP’s proposed amendment 1 to add the definition of coastal hazards; on **Page 12, lines 13-21**, and **page 13, lines 1-2**, the OP recommends amending HRS § 205A-2(c)(5)(B) as follows:
- (B) Ensure [~~that coastal dependent development such as~~] residential and commercial development, transportation infrastructure, [harbors and ports], and coastal related development [such as] , including but not limited to visitor industry facilities and energy generating facilities, are located, designed and constructed to minimize exposure to coastal hazards, and minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
6. For consistency with OP’s proposed amendment 1 to add the definition of coastal hazards; **Page 13, lines 12-14**, the OP recommends amending HRS § 205A-2(c)(5)(C)(ii) as follows:
- (ii) Adverse environmental effects and risks from coastal hazards are minimized; and
7. **Page 13, lines 17-20**, and **page 14, lines 1-17**, with the definition of “Coastal hazards” added to HRS § 205A-2, the OP recommends amending HRS § 205A-2(c)(6) Coastal hazards as follows:
- (6) Coastal hazards;
 - (A) Develop and communicate adequate information about [~~storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards~~] risks of coastal hazards;
 - (B) Control development, including planning and zoning control, in areas subject to [~~storm wave, tsunami, flood, erosion, hurricane,~~

~~wind, subsidence, and point and nonpoint source pollution hazards]~~ coastal hazards;

- (C) Ensure that development comply with requirements of the ~~[Federal]~~ National Flood Insurance Program; and
- (D) Prevent coastal flooding from inland projects;

8. **Page 16, lines 9-20, and page 17, lines 1-8,** the OP recommends amending HRS § 205A-2(c)(9) Beach protection as follows:

(9) Beach protection

- (A) 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;
- (B) Prohibit construction of private ~~[erosion protection]~~ shoreline hardening structures [seaward of the shoreline], including but not limited to seawalls and revetments, except [when they result in improved aesthetic and engineering solutions to erosion] at the sites and where the structures do not interfere with beach processes and existing recreational and waterline activities;
- (C) Minimize the construction of public ~~[erosion protection structure]~~ shoreline hardening structures [seaward of the shoreline], including but not limited to seawalls and revetments;
- (D) Avoid grading of and damage to coastal dunes;
- ~~(D)~~(E) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and
- ~~(E)~~(F) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor.

9. **Page 23, lines 10-11,** the OP does not see the reasons why HRS § 205A-29 shall not apply to permits for uses within the state conservation district as proposed by SB 1113. The special management area permit requirements apply to the state conservation districts if they are located within the county designated special management areas. Pursuant to HRS § 205A-5, all state and county agencies shall ensure that their rules comply with the objectives and policies of Chapter 205A, and any guidelines enacted by the legislature.

10. **Page 23, line 15,** the OP supports the amendments to HRS § 205A-43(a) to require setbacks along shorelines are established of not less than forty feet inland from the shoreline.

11. **Page 24, lines 11- 17**, the OP recommends amending HRS §205A-43.5(a)(2) as follows:
- (2) Protection of a legal structure ~~[costing more than \$20,000;]~~ or a public facility, which does not fix the shoreline, under an emergency authorization issued by the authority; provided that the structure or facility is at risk of immediate damage from shoreline erosion;
12. **Page 26, lines 5-21**, and **page 27, lines 1-3**, given that “hardship” may potentially be abused by the applicants to justify for their shoreline hardening structures, the OP recommends amending HRS §§ 205A-46(a)(8) and (9) as follows:
- (8) Private facilities or improvements ~~[which]~~ that will neither adversely affect beach processes, result in flanking shoreline erosion nor artificially fix the shoreline; provided that the authority also finds that hardship will result to the applicant will be deprived of reasonable use of the land if the facilities or improvements are not allowed within the shoreline area;
 - (9) Private facilities or improvements that may artificially fix the shoreline in front which no beach exists; provided that the authority [also] finds that [shoreline erosion is likely to cause hardship to] the applicant will be deprived of reasonable use of the land if the facilities or improvements are not allowed within the shoreline area, [and the authority imposes conditions to prohibit any structure seaward of the existing shoreline] and the action will neither affect beach processes nor curtail public access unless it is clearly in the public interest[;] such as in the case of an imminent threat of a road or highway, or other critical public infrastructure failure; or
13. Given that “hardship” was deleted from the amendments to HRS §§ 205A-46(a)(8) and (9), the OP recommends deleting HRS § 205A-46(b) as follows:
- (b) ~~Hardship shall be defined in rules adopted by the authority under chapter 91. Hardship shall not be determined as a result of county zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989, or as a result of any other permit or approval listed in rules adopted by the authority.~~

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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

ROBERT K. MASUDA
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M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
AGRICULTURE & ENVIRONMENT
and
WATER & LAND**

**Monday, February 11, 2019
2:45 p.m.**

State Capitol, Conference Room 224

**In consideration of
SENATE BILL 1113
RELATING TO COASTAL ZONE MANAGEMENT**

Senate Bill 1113 proposes to amend the Hawaii Coastal Zone Management Act, Chapter 205A, Hawaii Revised Statutes (HRS), to reduce residential exposure to coastal hazards with sea level rise, strengthen protections for state beaches, and update language for consistency with other HRS. **The Department of Land and Natural Resources (Department) supports this measure and offers the following comments.**

In 2017, the Governor signed legislation into law as Act 32, establishing the Hawaii Climate Change Mitigation and Adaptation Commission (Climate Commission). Act 32 also established a Climate Change Mitigation and Adaptation Coordinator (Climate Coordinator) position. The Climate Commission and Climate Coordinator are housed within the Department of Land and Natural Resources, Office of Conservation and Coastal Lands.

In their September 2018 meeting, the Hawaii Climate Change Mitigation and Adaptation Commission (Climate Commission), on which the Chair of the Board of Land and Natural Resources is a co-chair, agreed to five priority recommendations for countering impacts of sea level rise, including requesting that all new development, redevelopment, and modifications be directed away from beach areas; urging counties to incorporate the 3.2 foot sea level rise exposure area (SLR-XA) as detailed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report (Hawaii Sea Level Rise Report) into their general and community plans; and bring resources to assist in planning and implementing for sea level rise and other climate related

impacts. A copy of a press release from the Department regarding the Climate Commission's recommendations is attached for your convenience.

Further, the Hawaii Sea Level Rise Report, accepted by the Climate Commission in December 2017, recommendations include that the State support sustainable and resilient land use and community development; seek opportunities to development outside the SLR-XA; develop shoreline (i.e., beach and dune) protection, conservation, and restoration priorities and guidelines; integrate sea level rise vulnerability considerations into the Hawaii Coastal Zone Management Act (205A, HRS); and enable "legacy" beaches to persist with sea level rise.

As you know, 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 Hawaii. Beaches are central to our culture and economy. As described in Section 1 of the bill, our beaches are being lost at alarming rates due to natural processes and human impacts including sea level rise and concentrated shoreline development, threatening alongshore public access and upland development.

When shore-front property and homes are threatened by coastal erosion and flooding, the Department often faces intense pressure from land owners to permit erosion-protection structures such as seawalls and rock revetments. The science is clear that installing coastal armoring on a chronically eroding beach leads to beach narrowing and loss and increased erosion to unprotected neighboring properties. Increasing protection for beaches and other coastal resources, as well as strengthening prohibitions against seawalls and revetments, and strengthening zoning controls and shoreline building setbacks through the proposed updates to Chapter 205A HRS are critical if we want to allow our beaches to persist with sea level rise while improving resilience of our beachfront communities.

The Department offers the following suggested amendments to Section 205A-2, HRS on page 16, line 2 and 3 of the bill, to clarify that any private erosion protection structures should not be permitted that will interfere with beach processes during the expected lifespan of the structure. If constructed beyond the present-day reach of the waves, an erosion protection structure will interfere with beach processes over the expected lifespan of the structure when it becomes exposed by increasing shoreline erosion and wave run-up as described and mapped by the Hawaii Sea Level Rise Report. Suggested language for removal and inclusion below is highlighted in gray.

(9) Beach protection;

(A) Locate new structures inland from the shoreline
setback to conserve open space, minimize interference
with natural shoreline processes, and minimize loss of
improvements due to erosion;

(B) Prohibit construction of private coastal erosion-protection structures [~~seaward of the shoreline,~~], such as seawalls and revetments, except [~~when they result in improved aesthetic and engineering solutions to erosion~~] at [~~the~~] sites [~~and~~] where they ~~[do]~~will not interfere with beach processes and public beach access, and existing recreational and waterline activities during the expected lifespan of the structure; and

The Department offers the following suggested amendment to Section 205A-46 on page 26, line 11 and page 26, line 21 of the bill, to clarify that any private erosion protection structures should not be permitted that will interfere with beach processes during the expected lifespan of the structure. If constructed beyond the present-day reach of the waves, an erosion protection structure will interfere with beach processes over the expected lifespan of the structure when it becomes exposed by increasing shoreline erosion and wave run-up as described and mapped by the Hawaii Sea Level Rise Report. Suggested language for removal and inclusion below is highlighted in gray.

(8) Private facilities or improvements [~~which~~] that will neither adversely affect beach processes and public beach access, [~~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;~~], result in flanking erosion of adjacent properties, or interfere with existing recreational and waterline activities during the expected lifespan of the private facilities or improvements;

(9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority also finds that ~~[shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area, and the authority imposes conditions to prohibit any structure seaward of the existing shoreline]~~ the action will neither adversely affect beach processes and public beach access, result in flanking erosion of adjacent properties, or interfere with existing recreational and waterline activities during the expected lifespan of the private facilities or improvements unless it is clearly in the public interest[; or], such as in the case of an imminent threat of a road or highway failure, or other critical public infrastructure. In either case, a variance to artificially fix the shoreline shall not be considered unless the private facilities or improvements are in imminent danger of being damaged by erosion; or

The Department recognizes that Section 205A-46(b) referring to “hardship” may have to be removed if the Committee accepts our amendments to Sections 205A-46(8) and (9).

Thank you for the opportunity to comment on this measure.

Enclosure.



DEPARTMENT OF LAND AND NATURAL RESOURCES

DAVID Y. IGE
GOVERNOR

SUZANNE D. CASE
CHAIRPERSON

FOR IMMEDIATE RELEASE

Sept. 5, 2018

STATE CLIMATE COMMISSION ADOPTS RECOMMENDATIONS FOR COUNTERING IMPACTS OF SEA LEVEL RISE

(Honolulu) – The Hawai'i Climate Change Mitigation and Adaptation Commission (Climate Commission) at its regular quarterly meeting yesterday adopted a series of recommendations and finalized a mission statement to help guide Hawai'i's response to the impacts of climate change.

The Climate Commission is led by the DLNR Chair and the Director of the State Office of Planning and includes members from key state and county agencies. The group's mission statement formalized and approved at the meeting is as follows:

"Hawaii's Climate Commission recognizes the urgency of climate threats and the need to act quickly. It promotes ambitious, climate-neutral, culturally responsive strategies for climate change adaptation and mitigation in a manner that is Clean, Equitable & Resilient."

The recommended strategies or steps agreed upon by the Climate Commission include:

- Support legislation for disclosure for private property and public offerings located in areas with potential exposure to sea level rise.
- Request all new development, redevelopment and modifications be directed away from beach areas.
- Urge counties to incorporate the 3.2 ft. sea level rise exposure area (SLR-XA) into their general and development plans.
- Encourage agencies and non-governmental utility providers to identify and prioritize assets within the 3.2 ft SLR-XA or more as described in the State's Sea Level Rise report, identify adaptation measures, and to provide a status update on this activity annually to the Climate Commission.
- Support legislation that funds State programs to meet mitigation goals, and to bring resources to assist in planning and implementation for sea level rise and other climate related impacts.

The next quarterly meeting of the Climate Commission is scheduled for Tuesday, Nov. 27, 2018 from 1:00 – 4:00 p.m. at the Board of Land and Natural Resources meeting room, Kalanimoku Building, 1151 Punchbowl Street in Honolulu. All meetings are open to the public.

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RESOURCES

(All video/images courtesy: DLNR)

Hawai'i Climate Change Portal:

<http://climate.hawaii.gov/>

Rising Seas in Hawai'i television special:

<https://vimeo.com/249760017>

HD video-Sea level rise adaptation media clips:

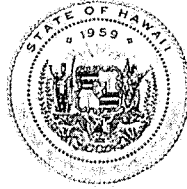
<https://vimeo.com/197533871>

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LATE

TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

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

Monday, February 11, 2019
2:45 PM
State Capitol, Conference Room 224

**SB 1113
RELATING TO THE ENVIRONMENT**

SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENTAL PROTECTION
AND WATER AND LAND

The Department of Transportation (DOT) **supports the intent** of this bill which proposes various amendments to HRS Chapter 205A, including amendments on the Coastal Zone Management (CZM) Program objectives and policies, special management area guidelines, and shoreline setbacks due to sea level rise and other natural and human impacts.

The Department of Transportation (DOT) supports the intent of this bill which proposes various amendments to HRS Chapter 205A, including amendments on the Coastal Zone Management (CZM) Program objectives and policies, special management area guidelines, and shoreline setbacks due to sea level rise and other natural and human impacts.

DOT respectfully offers the following comment related to the proposed amendment on page 24, lines 11-17. Limiting the waiver for a public hearing prior to actions on variance applications to only "temporary protections" and for emergency authorizations that do not exceed three (3) years is a concern for DOT. The definition for what constitutes a "temporary protection" is a concern as emergency actions may require robust response. Further, emergency authorizations that extend beyond three years are typically those requiring immediate and extensive responses. As such, requiring a public hearing prior to the granting of a variance application may result in delays to critical and necessary emergency responses.

Thank you for the opportunity to provide testimony.



SB 1113, RELATING TO COASTAL ZONE MANAGEMENT

FEBRUARY 11, 2019 · SENATE COMMITTEES ON
AGRICULTURE AND THE ENVIRONMENT AND
WATER AND LAND · CHAIRS SEN. MIKE GABBARD
AND KAIALI'I KAHELE

POSITION: Support.

RATIONALE: IMUAlliance supports SB 1113, relating to coastal zone management, which amends policies and objectives related to coastal zone management to reduce residential exposure to coastal hazards and protect state beaches and public shoreline access.

According to a report produced by the Hawai'i Climate Change Mitigation and Adaptation Commission, global sea levels could rise more than three feet by 2100, with more recent projections showing this occurring as early as 2060. In turn, over the next 30 to 70 years, approximately 6,500 structures and 19,800 people statewide will be exposed to chronic flooding. Additionally, an estimated \$19 billion in economic loss would result from chronic flooding of land and structures located in exposure areas. Finally, approximately 38 miles of coastal roads and 550 cultural sites would be chronically flooded, on top of the 13 miles of beaches that have already been lost on Kaua'i, O'ahu, and Maui to erosion fronting shoreline armoring, like seawalls.

As we work to reduce carbon emissions and stave off the worst consequences of climate change, we must begin preparing for the adverse impact of sea level rise on our shores, including by taking steps to reduce residential exposure to coastal hazards. We are now quantifying the speed at which we must act. We cannot continue to develop the 25,800-acre statewide sea level rise exposure area—one-third of which is designated for urban use—without risking massive structural damage and, potentially, great loss of life.



**TESTIMONY TO THE SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT,
AND WATER AND LAND
State Capitol, Conference Room 224
415 South Beretania Street
2:45 PM**

February 11, 2019

RE: SENATE BILL NO. 1113, RELATED TO COASTAL ZONE MANAGEMENT

Chairs Gabbard and Kahele, Vice Chairs Rudeman and Keith-Agaran, and members of the committees:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-HAWAII has the following **comments** on S.B. 1113 which proposes to amend policies and objectives related to coastal zone management to reduce residential exposure to coastal hazards and protect state beaches and public shoreline access.

Similar to S.B. 393, we understand that the proposed bill is in response to findings from a University of Hawaii Coastal Geology Study found that the current policies, objectives and practices allow for:

- (1) The hardening of shorelines through a hardship variance that is granted based upon demonstrated hardship brought on by coastal erosion. When granted, these hardship variances set into motion a cycle of shoreline armoring that causes "flanking", or amplified erosion, on properties adjacent to armored shorelines. This continuous cycle of hardening and flanking can extend along an entire beach and, in a section of northeast Oahu, approximately forty-five per cent of observed shoreline hardening was implemented in response to adjacent hardening. This cycle, caused by a combination of beach erosion and coastal policy, has resulted in the narrowing and even elimination of beaches to the extent that they can no longer be used for public recreation or cultural practice; and,
- (2) Renovation and expansion of single-family homes in erosion and flood-prone coastal areas, thereby extending building lifetimes indefinitely and allowing for virtually complete coverage of coastal parcels by these structures. The average building surface area increased by twenty per cent following the establishment of the State's coastal zone management program and, combined with sea level rise, this development increases the likelihood of mass structural failure and deposit of debris on public beaches.



As an island state, we all should be concerned about how climate change and sea level rise are impacting our coastal areas. However, the proposed amendments to the coastal zone management statutes make it more difficult for private property owners to protect or improve their properties along the coast. If government prevents a property owner from protecting their property because of the impact it would generate on the adjacent public lands, who should compensate the land owner for their loss?

Rather than create a system that gradually infringes upon private property rights over time, we would suggest a more comprehensive approach to addressing the problem today by doing the following:

1. Formally adopt the maps created by the Hawai'i Climate Change Mitigation & Adaptation Commission that identifies areas, now and in the future, that will be impacted by sea level rise. This would allow affected landowners to be informed of the possible designation and raise any concerns they may have through the Administrative Rule making process used to adopt the maps.
2. Identify those areas around the state that will be subject to high rates of coastal erosion due to sea level rise. Provide funding for condemnation of the private properties impacted and relocation of public infrastructure.

We appreciate the opportunity provide comments on S.B. 1113.



SENATE JOINT COMMITTEE ON AGRICULTURE & ENVIRONMENT AND WATER & LAND

February 11, 2019 2:45pm Room 224

In SUPPORT of SB 1113: Relating to Coastal Zone Management

Aloha Co-Chairs Gabbard and Kahele, Vice Co-Chairs Ruderman and Keith-Agaran, and members of the committees,

The HAWAI'I REEF AND OCEAN COALITION –HIROC– was formed in 2017 by coral reef scientists, educators, local Hawai'i environmental organizations, elected officials, and others to address a crisis facing Hawai'i's coral reefs and ocean, including those related to sea level rise.

We support passage of SB1113.

Sea level rise is a reality, and it is necessary to revise our statutes accordingly. SB1113 provides updates to Chapter 205A, -the Hawai'i Coastal Zone Management Act (HCZMA), to incorporate sea level rise within its objectives, policies, and permitting processes related to Special Management Areas and Shoreline Setbacks.

It also modifies the criteria for granting shoreline setback variances, address the narrowing and loss of beaches and public access caused in large part by granting of such variances in past years. As the sea level rises, many property owners in affected areas are likely to seek variances to armor their properties. SB 1113 provides measures needed to guard against further coastal armoring and promote managed retreat alternatives.

Mahalo for this opportunity to provide testimony **in support of SB1113.**

Kimiko LaHaela Walter on behalf of the Hawai'i Reef and Ocean Coalition.

COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Senator Mike Gabbard, Chair

Senator Russell E. Ruderman, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

DATE: Monday, February 11, 2019

TIME: 2:45 P.M.

PLACE: Conference Room 224

SB 1113 Relating to Coastal Zone Management

Support, Amendment

Aloha Chairs Gabbard and Kahele, Vice Chairs Ruderman and Keith-Agaran, and Members of the Committees

Life of the Land is Hawai'i's own energy, environmental and community action group advocating for the people and `aina for 49 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

Amendment: Prohibit construction of private coastal erosion-protection structures ...including seawall and rock revetments, except at sites where the private erosion-protection structures do not interfere with beach processes and existing and planned recreational and waterline activities.

Mahalo

Henry Curtis

Executive Director



Environmental Caucus

The Democratic Party of Hawai'i

SENATE JOINT COMMITTEE ON AGRICULTURE AND THE ENVIRONMENT AND WATER AND LAND

February 11, 2019 2:45 p.m. Room 224

In **SUPPORT** of **SB1113**: Relating to Coastal Zone Management

Aloha Chairs Gabbard and Kahele, Vice Chairs Ruderman and Keith-Agaran and Committee Members,

On behalf of the Environmental Caucus of the Democratic Party of Hawai'i (ECDPH), we **support passage of SB1113**, relating to coastal zone management.

Climate change and efforts to mitigate its effects is the single most pressing issue of our time. The impact of a 3.2 foot sea level rise, as outlined in the the findings of the Sea Level Rise Vulnerability and Adaptation Report in 2017 (hereafter referred to as "The Report"), is likely to be disastrous for Hawai'i's economy, sustainability, and way of life.

Sea level rise is a reality, and it is necessary to revise our statutes accordingly. SB1113 provides updates to Chapter 205A, -the Hawaii Coastal Zone Management Act (HCZMA), to incorporate sea level rise within its objectives, policies, and permitting processes related to Special Management Areas and Shoreline Setbacks.

It also modifies the criteria for granting shoreline setback variances, address the narrowing and loss of beaches and public access caused in large part by granting of such variances in past years. As the sea level rises, many property owners in affected areas are likely to seek variances to armor their properties. SB1113 provides measures needed to guard against further coastal armoring and promote managed retreat alternatives.

Mahalo for this opportunity to provide testimony in **support of SB1113**.

Lana Olson

Chair, Environmental Caucus of the Democratic Party of Hawai'i



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COMMITTEE ON WATER AND LANDS

Senator Kaiali`i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Senator Mike Gabbard, Chair
Senator Russell Ruderman, Vice Chair

Monday, February 11, 2019, 2:45 p.m., Conference Room 224

SB664 – Relating to Climate Change

SB828 – Relating to Coastal Erosion Adaptation Plan

SB930 -- Relating to Climate Change

SB944 – Relating to Climate Change

SB393 – Relating to Coastal Zone Management

SB1113 – Relating to Coastal Management

TESTIMONY

Nancy Davlantes, Legislative Committee Member, League of Women Voters of Hawaii

Chairs Kahele and Gabbard, Vice-Chairs Keith-Agaran and Ruderman, committee members:

The League of Women Voters of Hawaii echoes its testimony previously submitted to various House bills addressing the challenges taken up by the Senate in this hearing.

Hawaii's Climate Change Mitigation and Adaptation Commission, created by Act 32 in 2017, certainly has a lot on its plate, tasked in three of these bills to assist the state and counties with developing and implementing various sea level rise adaptation plans and climate change mitigation efforts; to prioritize nature-based solutions in its climate change mitigation and adaptation efforts and assess risk transfer market mechanisms that promote investments in nature to reduce the risks of climate change; and to determine areas in each county to designate for either armoring or managed retreat. Fortunately, these bills appropriate money, and it's going to take a lot of it.

If there's anything that stands out from a review of the objectives of each of these bills is that everything is inter-related. Climate change is all-encompassing: sea-level rise, coastal erosion, what to do about moving roads and property mauka of the ocean, preserving beach and access – these problems can't be confronted in isolation.

What is needed is an integrated approach to the significant challenges confronting our island state. The League is both gratified and impressed by the number of bills introduced this session by both the Senate and House, recognizing that delay in addressing these challenges is not an option.



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Now comes the hard part—sifting through the myriad bills, recognizing the common goals, and putting the pieces of the puzzle together to come up with the legislation and the money to put Hawaii on the course it needs to be on to face what’s ahead of us.

It’s a daunting task, to say the least, but the very number of bills introduced indicates that the time to act is now.

Thank you for the opportunity to submit testimony.

LATE

SB-1113

Submitted on: 2/10/2019 7:40:59 PM

Testimony for AEN on 2/11/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



SIERRA CLUB OF HAWAII

MĀLAMA I KA HONUA. *Cherish the Earth.*

LATE

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATE COMMITTEE ON WATER AND LAND

February 11, 2019 2:45 p.m. Room 224

In **SUPPORT** of **SB 1113**: Relating to Coastal Zone Management

Aloha Co-Chairs Gabbard and Kahele, Vice Co-Chairs Ruderman and Keith-Agaran, and members of the committees,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **strongly supports passage of SB 1113- Relating to the Environment, with amendments.**

SB 1113 updates Chapter 205A-the Hawaii Coastal Zone Management Act, to incorporate sea level rise within its objectives, policies, and permitting processes related to Special Management Areas and Shoreline Setbacks. This is necessary and timely, as sea level rise is here and will continue, at increasing rates, in future years. Its impacts are already being felt, especially in the form of narrowing or loss of beaches--a public trust resource which should be afforded the highest levels of protection.

A study by UH researchers titled "Failure to protect beaches under slowly rising sea levels" ¹ documents that over the time period covered by the study (1925-2015) more than thirteen miles of beach statewide have been completely lost to erosion fronting seawalls and revetments, due in part to a history of county agencies ("authorities" under Chapter 205A) frequently granting shoreline setback variances where the authorities have made a finding that denial of such variances would present a hardship to the private property applicants.

SB 1113 proposes to address shoreline setback variance issues by eliminating the hardship provision allowing shoreline setback variances, while also requiring that the proposed action for which a variance is sought will neither adversely affect beach processes, result in flanking of adjacent properties, nor curtail public access unless it is clearly in the public interest. We caution against removing the hardship test altogether, so as to avoid possible challenges based on constitutional requirements for due process. We also believe that eliminating the hardship provision would weaken the current law, as applicants would no longer need to demonstrate hardship to obtain a variance. Instead, we suggest that the hardship test be retained as a

¹ Summers, A., Fletcher, C.H., Spirandelli, D. et al. Climatic Change (2018) 151: 427.
<https://doi.org/10.1007/s10584-018-2327-7>

necessary condition in addition to, and not overruling, other requirements including those suggested in SB 1113, i.e. neither adversely affect beach processes, result in flanking of adjacent properties, nor curtail public access.

We offer the following suggested language for Section 205A-46, SECTION 7 (page 26-27 of the bill):

“(8) Private facilities or improvements that will neither adversely affect beach processes, result in flanking of adjacent properties, or curtail public access, 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;

(9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority also finds (a) that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area; and (b) the action will neither adversely affect beach processes, result in flanking of adjacent properties, nor curtail public access unless it is clearly in the public interest, for example, in the case of imminent threat of a road or highway failure, or to other critical public infrastructure.”

We strongly support the intent of this bill to halt, and reverse, the narrowing and loss of beaches and public access caused in large part by granting of shoreline setback variances, especially as we enter a new era of sea level rise. As the sea level rises we can expect a dramatic increase in the number of variances sought to armor coastal properties. It is appropriate to take measures now to guard against further coastal armoring and promote managed retreat alternatives where feasible.

Mahalo for this opportunity to provide testimony in **support of SB 1113**.

Mahalo,



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Testimony on SB 1113, Relating to Coastal Zone Management

Submitted to

Senate Committee on Agriculture and Environment and Senate Committee on Water and Land
2:45 pm, February 11, 2019 Hearing in Conference Room 224

About 4 decades ago I served on an advisory committee which reached consensus on the original wording of the objectives, policies, and definitions of Part II of Chapter 205A, Hawaii Revised Statutes. About 3 decades ago I drafted and convinced the Legislature to enact most of the current wording of Part III of Chapter 205A, Hawaii Revised Statutes. I now believe both Part II and Part III of Chapter 205A should be updated to address beach retreat and rising sea levels. If you incorporate the amendments recommended in this Testimony, I believe that SB 1113 will result in better choices about future shoreline structures.

Sooner or later, for most of Hawaii's developed low-lying shorelines, we will have to choose between:



SHORELINE REVETMENT PREVENTS SAFE PUBLIC LATERAL AND OCEAN ACCESS



SHORELINE REVETMENT ALLOWS SAFE PUBLIC LATERAL ACCESS



SHORELINE REVETMENT ALLOWS SAFE PUBLIC OCEAN ACCESS

The remainder of this Testimony proposes amendments to SB 1113 so that we don't always end up with shoreline structures which prevent safe public lateral and ocean access.

In SECTION 2 of SB 1113, Sec. 205A-2(c)(1)(B) should be amended to explicitly require:

Requiring the provision of safe public pedestrian lateral access along the shoreline and appropriately located safe public pedestrian access to the ocean as mandatory

conditions for approval of public and private development which may harden or fix the shoreline within the foreseeable future.

The existing SECTION 4 of SB 11113 should be deleted. Sec. 205A-29(b), Hawaii Revised Statutes was enacted to stop the BLNR from authorizing coastal development which the counties opposed. The proposed amendment of Sec. 205A-29(b), Hawaii Revised Statutes, might allow the State DOT to circumvent a preliminary injunction in Civil No. 14-1-005-1 (GWBC) which required a county SMA permit prior to DOT placement of jersey barriers to block public parking on City park property mauka of Laniakea Beach.

A replacement SECTION 4 should be added to amend the definition of “development” in Sec. 205A-29(b), Hawaii Revised Statutes. The proviso at the end of the definition of “development” should be amended to read:

... provided that whenever the authority finds that any excluded use, activity or operation may harden or fix the shoreline or may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.

This amendment is necessary so that the Honolulu Department of Planning and Permitting (DPP) requires a special management area (SMA) use permit or SMA minor permit for revetments which fix the shoreline for single family homes. For example, the DPP recently determined that existing law does not require a SMA permit for a proposed 643-foot-long, 11,000-square foot, \$850,000 shoreline revetment to protect 6 existing single family residences from beach retreat in Punaluu, Oahu.

Thank you for the opportunity to present my concerns.

SB-1113

Submitted on: 2/7/2019 6:49:48 PM

Testimony for AEN on 2/11/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Individual	Support	No

Comments:

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SB-1113

Submitted on: 2/10/2019 9:39:04 PM

Testimony for AEN on 2/11/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Thorne Abbott	Individual	Support	No

Comments:

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SB-1113

Submitted on: 2/10/2019 11:24:25 PM

Testimony for AEN on 2/11/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dwamato	Individual	Support	No

Comments:

LATE

SB-1113

Submitted on: 2/11/2019 3:21:36 PM

Testimony for AEN on 2/11/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ken Sentner	Individual	Support	No

Comments: