



LATE

SB 393, RELATING TO COASTAL ZONE MANAGEMENT

FEBRUARY 19, 2019 · SENATE WAYS AND MEANS
COMMITTEE · CHAIR SEN. DONOVAN DELA CRUZ

POSITION: Support.

RATIONALE: IMUAlliance supports SB 393, relating to coastal zone management, which amends coastal zone management laws to further protect against impacts of sea level rise and coastal erosion; requires new developments to plan for the impacts of projected sea level rise; and prohibits development in areas significantly affected by projected sea level rise.

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. 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.



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of
Aha Moku Advisory Committee

House Committee on Ways and Means

Tuesday, February 19, 2019
9:30 a.m.
Conference Room 211

**In Support of SB 393
Relating to Coastal Zone Management**

Senate Bill 393 amends coastal zone management laws to further protect against impacts of sea level rise and coastal erosion. It requires new developments to plan for the impacts of projected sea level rise and prohibits development in areas significantly affected by projected sea level rise. **Aha Moku supports this measure.**

On behalf of the Hawaii State Aha Moku in which is integrated the Hawaiian Islands of Moku O Keawe (Hawaii), Moku O Piilani (Maui), Moku O Kanaloa (Kahoolawe), Nanai Kaula (Lanai), Molokai Pule Oo (Molokai), Moku O Kakuhihewa (O'ahu), Manokalanipo (Kauai), Kawelonakala (Niihau), and Papahanaumokuakea (NW Hawaiian Islands), we support this measure.

In 2017, the Legislature established the Hawaii Climate Change Mitigation and Adaption Commission (Climate Commission) which was signed into law by the Governor and became Act 32. Since that time, and because the Climate Commission is housed within the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL); and because Aha Moku is also attached to DLNR we have had the opportunity to see first-hand, and to support OCCL who has addressed the critical issue of sea level rise.

We believe DLNR/OCCL has done everything in their power to address sea level rise including supporting the Climate Commission's recommendations of 2018. In sharing these recommendations with all of the islands, moku and ahupua'a that make up the Hawaii State Aha Moku, we have reached consensus where we support the 2018 Climate Commissions mandate to: 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 (SLA-XA) into their general and development plans; Encourage agencies and non-governmental utility providers to identify and prioritize assets within the 3.2 ft. sea level rise areas; and 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.

Further, we encourage all traditional natural and cultural resource practitioners who practice in coastal areas to bring forth their generational knowledge of sea level rise to the attention of the Climate Commission. Upon speaking to kupuna, we have realized that there may be areas where sea level rise may happen faster in these places, than upon the more commonly used public beaches.

Respectfully yours,

Leimana DaMate
Hawaii State Aha Moku
Phone: 808-640-1214
Email: Leimana.k.damate@hawaii.gov



SIERRA CLUB OF HAWAII

MĀLAMA I KA HONUA. *Cherish the Earth.*

SENATE COMMITTEE ON WAYS AND MEANS

February 19, 2019 9:30 AM Room 211

In **SUPPORT of SB 393**: Relating to Coastal Zone Management

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committees,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **supports passage of SB 393- Relating to the Environment, with several amendments.**

SB 393 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 (SMA) 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.

We have concerns with some of the proposed changes in SB 393 and respectfully offer the following comments:

- 1. Reconsider the removal of Section 205A-2 HRS Section 9, D & E (on page 16, lines 9-16).** These are important provisions to help maintain public access in a beach transit corridor:
 - ~~○(D) 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) 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;~~
- 2. Amend the residence-size limit for Section 205A-22 HRS, Section 3 (on page 18, lines 16-18).** Construction or reconstruction of single-family residences under 7,500 sq. ft. are currently exempt from SMA permits. To reduce residential exposure to coastal

hazards and limit the the construction or reconstruction of large homes within the SMA, we would encourage the committee to not eliminate the residence-size and impose a smaller residence-size limit:

- "Development" does not include the following: (1) Construction or reconstruction of a single-family residence that is less than ~~[seven thousand five hundred]~~ two thousand five hundred square feet of floor area and is not part of a larger development."
- We note the preamble of the bill (pages 3-4) states that a study by UH's coastal geology group found that current policies and practices allow for: "*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...combined with sea level rise, this development increases the likelihood of mass structural failure and deposit of debris on public beaches.*" We welcome language to help reduce and respond to the issues raised above.

3. Reconsider the removal of Section 205A-44 HRS, Section 8a, parts 1, 5, 6, and 7 (pages 29 lines 4-7 and page 30 lines 1-8). We certainly don't want to encourage the mining or taking of beach or marine deposits from the shoreline area, but believe that these exceptions are necessary provisions that should be retained:

- ~~(1) The inadvertent taking from the shoreline area of the materials, such as those inadvertently carried away on the body; and on clothes, toys, recreational equipment, and bags;~~
- ~~(5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;~~
- ~~(6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution; or~~
- ~~(7) For response to a public emergency or a state or local disaster.~~

4. Reconsider the removal of Section 205A-46 HRS, Section 9a, parts 8 and 9 (page 31 lines 9-13 and 18-21), which would eliminate the hardship provision. 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 hardship test be

retained in Section 205A-46 HRS, Section 9a, parts 8 and 9, as a necessary condition in addition to, and not overruling, other requirements including those suggested in SB 393, i.e. neither adversely affect beach processes, result in flanking of adjacent properties, nor curtail public access.

- **We recommend the following suggested language:**
 - (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.

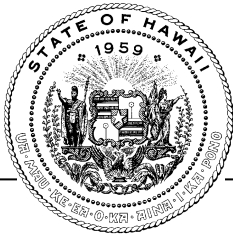
We strongly support the intent of this bill to halt, and reverse, the narrowing and loss of beaches and public access caused in large part by granting of shoreline setback variances, especially as we enter a new era of sea level rise. As the sea level rises we can expect a dramatic increase in the number 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 393, with amendments.**

Mahalo,



Jodi Malinoski, Policy Advocate



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Statement of
LEO R. ASUNCION
Planning Program Administrator, Office of Planning
before the
SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, February 19, 2019
9:30 AM
State Capitol, Conference Room 211

in consideration of
SB 393
RELATING TO COASTAL ZONE MANAGEMENT.

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate Committee on Ways and Means.

The Office of Planning (OP) respectfully offers the following comments with critical amendments (comments 1-6) that will address the purpose of this measure to strengthen Coastal Zone Management (CZM) objectives and policies to reduce residential exposure to coastal hazards and protect beaches, while allowing continuity of services for public facilities and improvements. OP also offers amendments (comments 7-15) that are technical and nonsubstantive in nature for purposes of clarity and consistency throughout the statute.

1. **Page 18, lines 16-19**, to mitigate risks of single-family residences from coastal hazards, and their impacts on public beaches and shoreline, the OP recommends amending construction or reconstruction of a single-family residence as not “development” set forth in HRS § 205A-22 as follows:
 - (1) Construction or reconstruction of a single-family residence that is ~~is [less than seven thousand five hundred square feet of floor area]~~ not situated on a parcel that either abuts the shoreline or is subject to the threat of wave, storm surges, high tide, or shoreline erosion, and is not part of a larger development;
2. **Page 22, lines 8-13, and 16-20**, the cost threshold \$125,000 between the Special Management Area (SMA) Use Permit and SMA Minor Permit was established in 1991, and a public hearing and an environmental assessment would be required for a SMA Use Permit. Given the fact that the construction costs have significantly increased since 1991, the OP suggests retaining the existing cost threshold of \$500,000 to avoid the delay of developments that are not

necessarily required to go through the procedures of SMA Use Permit applications.

3. **Page 27, lines 1-3**, the OP does not see relevant reasons why HRS § 205A-29 shall not apply to permits for uses within the state conservation district as proposed by this measure. The SMA permit requirements applies to uses of the state conservation districts if they are located within the county designated special management areas. The SMA permit requirements for uses within the conservation district will ensure the participation of the local communities to protect coastal resources and public shoreline access. 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.
4. **Page 27, line 7**, the OP supports the amendments from this measure to HRS § 205A-43(a) to require setbacks along shorelines are established of not less than forty feet inland from the shoreline.
5. **Page 28, lines 2- 9**, the OP recommends amending HRS §205A-43.5(a)(2) to potentially waive a public hearing prior to action on a variance application for:
 - (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 public facility is at risk of immediate damage from shoreline erosion;
6. **Page 31, lines 8-21, and page 32, lines 1-7**, the purpose of shoreline setbacks and prohibition of structures within the shoreline area is to provide a buffer zone to protect beach processes, shoreline open space, public access to and along the shoreline, and minimize the risk of coastal hazards to life and property. A shoreline setback variance is an exception to the prohibition of structures within the shoreline area. To leave the discretionary variance to the county authorities to allow private facilities or improvements within the shoreline area, and restrict new 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, or result in flanking shoreline erosion nor artificially fix the shoreline; provided that the authority [~~also finds that~~] may consider hardship that 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 except for areas with sand beaches; provided that the

~~[authority also finds that shoreline is likely to cause] action will not interfere with existing recreational and water line activities; provided further that the authority may consider hardship that will result 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 unless it is clearly in the public interests]; or~~~~

In addition, the OP proposes the following technical amendments (comments 7-15) for clarity, consistency, and style.

7. 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" means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, and point and nonpoint source pollution.

8. **Page 6, line 8**, 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.

9. **Page 6, lines 17-21**, the OP recommends amending HRS § 205A-2(b)(9) Beach protection by replacing the term “ecosystem services” with “benefits of coastal ecosystems”, and replacing the proposed language from HB 549 on **page 7, lines 1-2**, with the language for the beach protection objective, as follows:

- (9) Beach protection;
(A) Protect beaches and coastal dunes for
(i) public use and recreation;
(ii) benefits of coastal ecosystems; and
(iii) natural barriers to coastal hazards; and
(B) Coordinate and fund beach management and protection.

10. **Page 7, lines 17-21**, and **page 8, lines 1-5**, 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;

11. For consistency with OP’s proposed definition of coastal hazards, on **Page 12, lines 1-12**, 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

12. Also for consistency with OP’s proposed definition of coastal hazards, on **Page 13, lines 1-2**, 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

13. **Page 13, lines 6-20, and page 14, lines 1-6**, 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;

14. **Page 15, lines 12-21, and page 16, lines 1-16**, to restrict shoreline hardening structures, 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], such as 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], such as 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.

15. **Page 21, lines 9-11**, Act 111 of 2014 Hawaii Session Laws requires that Hawaii Revised Statutes including HRS § 205A-22 shall be amended by substituting the phrase “emergency management” whenever the phrase “civil defense” appears, as the context requires.

Thank you for the opportunity to testify on this measure.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Tuesday, February 19, 2019
9:30 a.m.
State Capitol, Conference Room 211

In consideration of
SENATE BILL 393
RELATING TO THE ENVIRONMENT

Senate Bill 393 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 and amendments.**

1. To ensure clarity and consistency throughout the Chapter relating to coastal hazard 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 6, lines 6-8, we recommend 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 6, lines 17-21, and 7, lines 1-2, the we recommend 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 [~~for public use and recreation~~] and coastal dunes for:

- (i) public use and recreation;
- (ii) benefits of coastal ecosystems;
- (iii) natural barriers to coastal hazards; and
- (B) Coordinate and fund beach management and protection.

4. Page 7, lines 17-21, and page 8 lines 1-5, we recommend amending HRS § 205A-2(c)(1)(B)(ii) by replacing the term “replacement” with “restoration, not “protection,” and not removing language regarding reasonable monetary compensation as this could impact compensatory natural resource mitigation programs.
 - (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 the proposed amendment to add the definition of coastal hazards; on Page 12, lines 1-10, we recommend 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 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 the proposed amendment to add the definition of coastal hazards; Page 13, lines 1-2, we recommend 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 7-20, and page 14, lines 1-6, with the definition of “Coastal hazards” added to HRS § 205A-2, we recommend 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 controls, 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 15, lines 17-21, and page 16, lines 1-8, we recommend 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], such as seawalls and revetments, ~~[except when they result in improved aesthetic and engineering solutions to erosion]~~ at ~~[the]~~ sites and with sand beaches [do not interfere with beach processes] and at sites where shoreline hardening structures interfere with [and] existing recreational and waterline activities;

(C) Minimize the construction of public ~~[erosion protection structure]~~ shoreline hardening structures [seaward of the shoreline], such as seawalls and revetments at sites with sand beaches and at sites where shoreline hardening structures interfere with existing recreational and water line activities;

(D) Avoid grading of and damage to coastal dunes;

9. The Department respectfully asks that the following amendment to Section 205A-2, HRS on page 16, lines 9-16 of the bill, be reconsidered and that the parts (D) and (E) not be removed. The Department is actively working with beachfront landowners to discourage inducing or cultivating vegetation beyond the shoreline and requiring removal of encroaching vegetation along the shoreline to maintain the public's right of passage along a beach transit corridor.

(D) 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) 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;

10. Page 18, lines 16-19, to mitigate risks of single-family residences from coastal hazards, and their impacts on public beaches and shoreline, we recommend amending construction or reconstruction of a single-family residence as not "development" set forth in HRS § 205A-22 as follows:

(1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area, is not situated on a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion, and is not part of a larger development;

11. Page 22, lines 8-20, the cost threshold \$125,000 between the Special Management Area (SMA) Use Permit and SMA Minor Permit was establish in 1991. A public hearing and even an environmental assessment will be required for a SMA Use Permit. Given the fact that the construction costs have significantly increased since 1991, we suggest retaining the existing cost threshold \$500,000 to avoid the delay of developments that are not necessarily required to go through the procedures of SMA Use Permit applications.

12. Page 27, lines 10-11, we request that HRS § 205A-29(c) in which it is stated “This section shall not apply to permits for uses within the state land use conservation district designated pursuant to chapter 183C,” **not be added to the statute.**
13. Page 27, line 7, we support the amendments to HRS § 205A-43(a) to require setbacks along shorelines are established of not less than forty feet inland from the shoreline.
14. Page 28, lines 3- 9, we recommend 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 public facility is at risk of immediate damage from shoreline erosion;
15. The Department respectfully asks that the following amendments on page 29, lines 4-7 and page 30 lines 1-8 of the bill, be reconsidered and that the parts (1), (5), (6), and (7) not be removed (re-instated) from Section 205A-44, HRS. The Department appreciates the intent to strengthen prohibitions against taking sand or other natural beach or marine deposits from the shoreline area. However, we feel the proposed amendments may be too restrictive.
 - (a) The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited with the following exceptions:
 - (1) The inadvertent taking from the shoreline area of the materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;
 - (5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;
 - (6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution; or
 - (7) For the response to a public emergency or a state or local disaster.
16. Page 26, lines 5-21, and page 27, lines 1-3, the purpose of shoreline setbacks and prohibition of structures within the shoreline area is to provide a buffer zone to protect beach processes, shoreline open space, public access to and along the shoreline, and minimize the risk of coastal hazards to life and property. We recommend amending HRS §§ 205A-46(a)(8) and (9) as follows:
 - (8) Private facilities or improvements, excluding seawalls and revetments, [which] that will neither adversely affect beach processes, or result in flanking shoreline erosion [~~nor artificially fix the shoreline~~]; provided that the authority [~~also finds that~~] may consider hardship that 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 except for areas with sand beaches; provided that the [~~authority also finds that shoreline is likely to cause~~] action will not interfere with existing recreational and water line activities; provided further that the authority may consider hardship that will result 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 unless it is clearly in the public interests]; or~~

Thank you for the opportunity to comment on this measure.

SB-393

Submitted on: 2/18/2019 7:34:58 AM

Testimony for WAM on 2/19/2019 9:30:00 AM

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:

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
WAYS AND MEANS**

S.B. 393
Relating to Coastal Zone Management

Tuesday, February 19, 2019
9:30 a.m. Agenda Item # 6
State Capitol, Conference Room 211

Written Testimony in Opposition with Requested Amendments

Kerstan J. Wong
Director, Engineering Division
Hawaiian Electric Company, Inc.

Dear Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Committee,

My name is Kerstan Wong and I am testifying on behalf of the Hawaiian Electric Company Inc. and its subsidiary utilities Maui Electric Company, Limited and Hawai'i Electric Light Company, Inc. (collectively, "the Hawaiian Electric Companies") in **opposition with amendments** to S.B. 393, SD1, Relating to Coastal Zone Management, as the current language may pose a threat to the maintenance of our facilities. The Hawaiian Electric Companies respectfully request the following amendments, which if accepted, would allow Hawaiian Electric to support this Bill:

- 1) Page 16 at line 4: Add in "or the private erosion protection structures are needed to ensure public utilities, regulated under chapter 269, can continue to provide service to customers;" This language ensures that our facilities can continue to generate electricity for our customers in the event – that our electric facilities require protection from erosion.
- 2) Page 22 at lines 9 and 10: Leave in original language "the valuation of which is not in excess of \$500,000" and remove proposed language "valued at \$125,000 or less." Given the high cost of construction in Hawaii, \$125,000 places unreasonable limits on what can practically be installed under this Bill.
- 3) Page 22 at lines 17 and 18: Leave in original language "the valuation of which exceeds \$500,000" and remove proposed language "valued at more than \$125,000."

- 4) Page 28 at line 4: Add in “facility owned by a public utility regulated under chapter 269.” This ensures facilities owned by public utilities can be addressed quickly by not requiring a public hearing for temporary repairs.
- 5) Page 28 at line 9: Increase authorization time period from three to five years. This will provide reasonable time for permitting and environmental reporting on a permanent repair.

Hawaiian Electric has facilities near the shoreline that are critical to provide electricity. Occasionally, these facilities require upgrades or repairs to ensure electricity can be generated and delivered. The above amendments ensure that Hawaiian Electric Companies can fulfill its obligation to provide reliable electricity to our communities.

The Hawaiian Electric Companies understand the anticipated effects of climate change - including increased storm activity and rising sea levels – therefore these important issues are part of our long-range planning and our ongoing work to enhance the resilience of our infrastructure.

Accordingly, the Hawaiian Electric Companies respectfully request the above amendments be adopted into S.B. 393. Thank you for this opportunity to testify.

SB-393

Submitted on: 2/17/2019 9:47:17 PM

Testimony for WAM on 2/19/2019 9:30:00 AM

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

Comments:

Douglas Meller
2615 Aaliamanu Place
Honolulu, Hawaii 96813
douglasmeller@gmail.com

Testimony Opposing Section 5 of SB 393, Relating to Coastal Zone Management

Submitted to
Senate Committee on Ways and Means
9:30 am, February 19, 2019 Hearing in Conference Room 211

PLEASE DELETE SECTION 5 of HB 393. Exempting all development within the Conservation District from special management area (SMA) use permit requirements might allow the State DOT to circumvent a preliminary injunction in Civil No. 14-1-005-1 (GWBC) which required the DOT to:

- remove the jersey barriers shown in the following picture and
- obtain a SMA permit prior to reinstalling jersey barriers to block public parking on City park property mauka of Laniakea Beach.



LATE

Testimony SB 393
February 19, 2019 at 9:30AM
Conference Room 211
Committee on Ways and Means

Honorable Chair, Vice Chair and Members of the Committee,

I support SB 393 with changes and respectfully ask that the following amendment to Section HRS 205A-2, (9)(D) and (E) not be deleted.

(9) Beach protection;

(D) 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) 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;

There are serious concerns regarding removing the current prohibitions related to inducing and cultivating vegetation that encroaches on the public beach transit corridors. Vegetation encroachment onto the beach is a serious problem on Kauai; it is responsible for beach loss across many beachfront locations where 20-60 feet of pristine white sandy beaches now are oasis of planted fertilized vegetation that blocks safe lateral access. Government agencies need this tool to discourage landowners from inducing and cultivating vegetation beyond the shoreline and to require removal of the encroaching vegetation to maintain the public's right of transit. Coconut Palms have been planted on the beach in many locations. Most are uncared for presenting a large liability for the state. Please maintain these provisions in the law as you improve it.

Mahalo for your consideration,

Caren Diamond