

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
FIRST DEPUTY

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 Committee on
WATER AND LAND**

**Monday, March 25, 2019
1:15 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE CONCURRENT RESOLUTION 40/SENATE RESOLUTION 28
REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO
ACQUIRE BY EMINENT DOMAIN THE SEAWALL AND THE REAL PROPERTY
UNDERNEATH THE SEAWALL THAT IS LOCATED ON OR NEAR THE SEAWARD
BOUNDARIES OF PROPERTY BETWEEN 2943 KALAKAUA AVENUE AND 3019
KALAKAUA AVENUE, OAHU, HAWAII**

Senate Concurrent Resolution (SCR) 40/Senate Resolution (SR) 28 proposes to request the Department of Land and Natural Resources (Department) to acquire by eminent domain the seawall and the real property underneath the seawall that is located on or near the seaward boundaries of property between 2943 Kalakaua Avenue and 3019 Kalakaua Avenue. **The Department strongly opposes this measure.**

In *Gold Coast Neighborhood Association v. State of Hawaii*, 140 Hawaii 437, 403 P.3d 214, (2017), the Hawaii Supreme Court ruled, in a 3-2 decision under dissent from the Chief Justice, that by virtue of implied dedication and without any formal approval or acceptance, the State involuntarily acquired an easement over and across the seawall. However, the Court also ruled that the State does not own the seawall structure itself or the real property underneath the seawall. The Court also determined that the State has both a right and duty together with the relevant property owners for the repair and maintenance of the top surface of the seawall, over and across which the State has an easement, in accordance with equitable considerations relating to the parties' relative use, enjoyment and contributions to the seawall.

Given the Court's ruling, the Department's position is that the State's rights and obligations are limited solely to a portion of the public right of way on the top surface of the seawall. Therefore, as things presently stand, the Department may only repair the top surface of the seawall, with the costs to be shared with the relevant property owners. Currently, the repair and maintenance obligations between the Department and the relevant property owners have yet to be determined.

Alternatively, if a policy decision is made by the Department not to repair the wall, or the apportionment of repairs is deemed too costly, the Department may, in lieu of repairs, perform other safety measures such as constructing a handrail on the makai edge of the top of the seawall, or posting warning/safety signs giving notice of its condition, or closing the seawall to pedestrian traffic. *Note 33 of Majority Opinion.*

Notwithstanding the above ruling, the Department has no obligation to repair or maintain the seawall itself; to do otherwise would amount to expending public funds for private benefit. SCR 40/SR 28 proposes to grossly alter the State's legal obligation as determined by Court's ruling by imposing significant financial and legal liability on the Department that is inimical to the public interest. As noted in the Court's dissenting opinion, the seawall is a privately-owned structure that serves to protect private property and likely contributes to chronic coastal erosion in Waikiki. The Department also shares the concern expressed by the dissenting opinion that such action could ultimately lead to the State providing assistance to other private landowners statewide to repair and maintain seawalls built to protect private oceanfront development which would create an extraordinary unmanageable and unaffordable precedent in the face of rising sea level. Given the Department's longstanding position against shoreline armoring which harms beaches and adjacent properties, we would oppose such an obligation as anathema to the Department's mission to preserve and protect coastal resources held in trust by the State for the public.

Thank you for the opportunity to comment on this measure.

ASSOCIATION OF APARTMENT OWNERS
DIAMOND HEAD BEACH HOTEL AND RESIDENCES
2947 KALAKAUA AVENUE
HONOLULU, HAWAII

March 24, 2019

SCR No 40/ SR 28 – Supporting the Request to have DLNR Acquire the Seawall
And Land Underneath between 2943 and 3019 Kalakaua Avenue

Hearing Scheduled Monday, March 25, 2019 at 1:15 p.m.
Committee on Water and Land

Dear Senator Kahele and Members of the Committee:

On behalf of the Board of Directors of the Association of Apartment Owners of the Diamond Head Beach Hotel and Residences (“DHB”), this is to support the passage of this Resolution so that the seawall can be repaired and maintained.

The DHB is a sixty-two unit leasehold condominium located on the Makai side of Kalakaua with direct ocean frontage. The property taxes our unit owners pay is close to \$9,000,000 per year because we are zoned Hotel/Resort. Besides the Kaimana Beach Hotel, we are the only other building along the Diamond Head end of Kalakaua that allows short term vacation rentals,

It is important that the State take over ownership of the seawall so that our community - owners, guests, surfers, fishermen, and visitors - can safely traverse this footpath.

Also, with global warming and the sea rising, this seawall is our bastion from that. If the wall were to start to fall into the sea, the ocean’s waves would be disastrous for all of the building owners and the Elks Club – all of which have little or no sand between the ocean and our properties.

Dated: Honolulu, Hawaii; March 24, 2019

DocuSigned by:

Peter Yee

Peter Yee

Board President

SCR-40

Submitted on: 3/23/2019 2:51:17 PM

Testimony for WTL on 3/25/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Gentry	Testifying for Gold Coast Neighborhood Assn	Support	Yes

Comments:

I am Robert Gentry, President of the Gold Coast Neighborhood Association. I speak in favor of SCR 40.

The Gold Coast Neighborhood Association believes the long standing public access to the ocean front, and the ocean, along the Diamond Head seawall, in Waikiki, should be preserved as a safe access for residents and visitors alike. This facility is several decades old, and constructed long before any of the residential buildings on the Gold Coast were permitted and built. Waikiki, and it's ocean front, have long been known as one of the most popular ocean access points in the Country, if not the world. It would be inconceivable to not maintain this seawall, and it's walkway, for safe public use. In fact, a majority of the jurists who have reviewed this case in the Courts over the last several years, concur with this position, and have ruled that the State of Hawaii should repair and maintain the historic seawall for that purpose. I am not in favor of building seawalls. In fact, when I served as the Mayor and City Councilmember of Laguna Beach, California (1982-1998), I was a vocal opponent of seawalls. This case is unique, because the seawall has been in place for several decades and served, and serves, the public very well. In addition, it cannot be removed, or left in disrepair, for obvious land use and safety issues. Please support SCR 40.

With Aloha,

Robert Gentry

808/923-4060

SCR-40

Submitted on: 3/23/2019 2:35:14 PM

Testimony for WTL on 3/25/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joanne Taylor	Individual	Support	No

Comments:

The seawall has been a public access for residents and visitors alike and frequently used as a pathway by the ocean as well as a fishing venue during even years. The wall is badly in need of repairs and I and as well as my other water user friends support this measure which would result in the needed repairs being completed.

Thank you for your time considering this testimony.

J Taylor

SCR-40

Submitted on: 3/23/2019 7:07:06 PM

Testimony for WTL on 3/25/2019 1:15:00 PM

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

Comments:

I am writing in support of Bill SCR 40 because the seawall is used by the general public and gives access to the ocean for surfers and fisherman. The seawall should be maintained and kept in good and safe condition for the public's use.

The Seawall is also a historical structure and it should not be left to fall apart anymore. It's a shame and an embarrassment that the government is ignoring the Seawall and its upkeep.

The Seawall should be restored to a safe condition the public can use to access the ocean for sports and fishing.

Sincerely, Kathryn Nicholson

SCR-40

Submitted on: 3/23/2019 7:16:29 PM

Testimony for WTL on 3/25/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maurice Nicholson	Individual	Support	No

Comments:

I am writing in support of Bill SRC 40.

As a resident of the Gold Coast I observe the public use of the seawall on a daily basis. Fisherman, kayaks, swimmers, surfers and tourists all walking on the seawall and accessing the ocean. Rarely do I see Gold Coast residents using the SeaWall.

The Seawall should be repaired and maintained for safety reasons. The wall is crumbling in some parts and is a public safety issue.

Maurice Nicholson

SCR-40

Submitted on: 3/24/2019 8:02:08 AM

Testimony for WTL on 3/25/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Keith McKenzie	Individual	Support	No

Comments:

My wife and I are shareholders at Tropic Seas, one of the properties impacted by this bill. As you know, the Hawaii Supreme Court ruled that the seawall belonged to the state, and as such, the legislature has the responsibility to maintain the seawall. There are many areas of the seawall, and particularly the surface, that desperately need maintenance, as they present a daily hazard to walk over. It is time the state act beyond studying and delaying the improvements needed to protect property along the Gold Coast. As sea water rises, the issue of maintenance will only become more acute. Let's move this project forward before there is a catastrophic failure that will cost even more to restore this vital public asset.

SCR-40

Submitted on: 3/24/2019 12:07:51 PM

Testimony for WTL on 3/25/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward K. Conklin	Individual	Support	No

Comments:

I strongly support the acquisition by DLNR of the seawall and property under the seawall by eminent domain as described in SCR 40. This seawall is also a public pathway, and has been so for at least 65 years. Our apartment overlooks the seawall, and we see it being used every day by the public, for fishing, swimming, snorkeling, and access to the beaches along it. But the wall is old, and needs repair and upkeep. It must be maintained so that continued access to this portion of the shoreline is safely available to the public.

We cannot continue to argue back and forth over who is responsible for the maintenance while the wall continues to deteriorate. It is well established by precedent that the State is responsible for maintaining the wall and its long-existing public footpath. This bill specifically provides for that by making it State property, and its passage is clearly in the public interest.

LATE

SCR-40

Submitted on: 3/24/2019 5:16:34 PM

Testimony for WTL on 3/25/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Veronica Gail Worth	Individual	Support	Yes

Comments:

I believe everyone realizes the potential benefit to be gained by the State taking possession of the seawall as long as the State proceeds to preserve and protect the seawall for future generations just as generations of our neighborhood have used the seawall to gain access to the surf, the beaches and the ocean itself.

LATE

SCR-40

Submitted on: 3/25/2019 6:03:38 AM
Testimony for WTL on 3/25/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
ALan J Mac	Individual	Support	No

Comments:

The sealwall needs to be maintained for the public's use and safety. We watch everyday as local citizens use the walkway to access the beach to swim, surf and fish and without it being maintained saely, they woudl have no access to a lot of areas blocked by ldgs wth no access.

LATE

SCR-40

Submitted on: 3/24/2019 11:27:14 PM
Testimony for WTL on 3/25/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Quaiver	Individual	Support	No

Comments:

Dear Sir,

The Sea Wall, just as with Kapiolani Park, is a part of the public domain. After years of court rulings, the Supreme Court ruled that the Sea Wall between 2943 Kalakaua Ave and 3019 Kalakaua Ave., is in fact, legally public domain. However, in spite of the Supreme Court ruling which took place years ago, nothing has been done by the City or the State to repair the obvious decay & crumbling of the Sea Wall? The Sea Wall, along with the stairs that allows swimmers, surfers, fisherman, etc., to safely enter the ocean, and take advantage of the seaside. In addition, the Sea Wall provides for the protection of Kapiolani Park as well as all the buildings along the Coast, especially in case of tropical storms, and possible Tsunami.

We have been lucky so far, but there is a potential for personal injury which can not be ignored. If it is ignored, it will be at the regret of all parties involved, and we can be sure that all of us want to avoid this problem. Therefore, we need to vote "YES" for SCR40!!!

Mahalo,

Steven P Quaiver