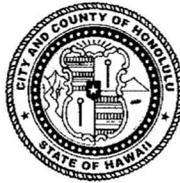


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8000 • FAX: (808) 768-8041
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MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

March 16, 2009

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

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

The Department of Planning and Permitting (DPP) **opposes** the proposed amendments in Senate Bill 468, SD1 relating to shoreline setbacks and shoreline setback variances. Of particular concern:

- Amendments to Section 205A-43, Hawaii Revised Statutes (HRS), included in Bill Section 5, which will increase the minimum shoreline setback from 20 to 40 feet, and eliminate the authority of the counties to prescribe rules under Chapter 91, HRS for determining the shoreline setback line.
- Amendments to Section 205A-45, HRS, included in Bill Section 7, which will mandate that the shoreline setback line shall be a distance not less than the average coastal erosion rate based on a 100-year projection, in addition to a minimum 40-foot requirement.
- Amendments to Section 205A-46, HRS, included in Bill Section 8, which will impose a "clear public interest" test for shoreline setback variance approvals involving private facilities or improvements that may artificially fix the shoreline, in addition to the current "hardship" criteria.

We have no objection to the establishment of shoreline setbacks based on an average coastal erosion rate. Both Maui and Kauai counties have already adopted differing methodologies which, to some degree, involve average coastal erosion rates. However, this particular methodology is not the only reasonable and/or responsible basis for an appropriate shoreline setback for all coastlines. The State of Hawaii, for instance, estimates that 75 percent (75%) of Oahu's coastline is already developed. [Source: Hawaii State Data Book, 2004.] Along Oahu's heavily developed coastlines, most existing structures and other improvements on

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources
State House of Representatives
Re: Senate Bill 468, SD1
March 16, 2009
Page 2

shoreline lots will be rendered nonconforming when the shoreline setback is increased, since development along Oahu's coastlines has now been based on a 40-foot setback for 38 years (see attachments). Indeed, significant improvement on many Oahu coastlines, from public roadways and drainage improvements to residential and resort development, occurred prior to the establishment of a shoreline setback mandate on June 22, 1970. Furthermore, there are now numerous shoreline lots on Oahu which are too narrow to support development with even a 40-foot shoreline setback. Therefore, the ability to adjust the shoreline setback to no less than 20 feet for lots with limited developable area is very important to address what will otherwise result in extreme hardship for many affected property owners.

Under contract with the DPP, the University of Hawaii (Dr. Chip Fletcher) is currently preparing a coastal erosion study for Oahu's sandy beaches. Although progress has been made, we anticipate that the conclusion of this study will still take another 1.5 years to complete. At that time, the DPP will initiate an evaluation of the study results, existing patterns of development and lot configuration along Oahu's various coastlines, and other appropriate considerations to determine reasonable, appropriate shoreline setbacks for the consideration of our City Council. It is, therefore, premature to mandate a specific methodology for the determination of shoreline setbacks until we have been able to responsibly study the relevant circumstances. What may have been determined appropriate for Maui or Kauai Counties, which have experienced significantly less coastline development to date, is not necessarily going to be appropriate for the different kinds of coastline conditions which characterize the islands of Oahu and/or Hawaii. The counties need and should have the ability and flexibility to determine shoreline setback requirements appropriate to their own jurisdictions.

Accordingly, we support bill language similar to that recommended by the State of Hawaii Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL), for Section 205A-43(a), HRS, which should read:

"(a) ~~[Setbacks along shorelines are established of not less than twenty feet and not more than forty feet inland from the shoreline.]~~ The shoreline setback line may be established using a method including, but not necessarily limited to, an average annual shoreline erosion rate, and shall not be less than twenty feet from the shoreline. The department shall adopt rules pursuant to chapter 91, prescribing procedures for determining the shoreline setback line, and shall enforce the shoreline setbacks and rules pertaining thereto.

The above language clearly authorizes coastal erosion rates as an appropriate methodology for the determination of shoreline setback lines, but will further provide for the adoption of variable setbacks based on determined erosion hazards and other relevant considerations; and, sets the minimum shoreline setback at not less than 20 feet.

As concerned as we are about the proposed provisions to increase the minimum shoreline setbacks and the method for determining them, the proposed change to the test for granting a shoreline setback variance is particularly troubling. A "hardship" test for granting a

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources
State House of Representatives
Re: Senate Bill 468, SD1
March 16, 2009
Page 3

variance is and always has been appropriate. Hardship evaluation relates the specific physical characteristics of a property to the shoreline setback requirement for the site, and determines whether without the variance the property becomes unusable. Adding a "clear public interest" test will trump hardship as the appropriate grounds for justifying a variance for private facilities or improvements, already provided under HRS Section 205A-46(a)(8). The bill in its current form would delete HRS Section 205A-46(a) (9), which requires a "clear public interest" test only for those structures which would artificially fix the shoreline makai ("seaward") of the existing shoreline. The current statute is appropriate, since the area seaward of the shoreline is reserved under state law for lateral public access. However, Senate Bill 468 would replace the existing subdivision (9) with a new subsection (b), which imposes the "clear public interest" test on virtually all private facilities and improvements within the "shoreline area," which includes all land seaward of the shoreline setback line. The land between the shoreline setback and the shoreline is private property, with no right of public access attributed to it under state law. We suspect these amendments are intended to prevent future seawalls; however, virtually any structure with a fixed location on the ground artificially fixes the shoreline, and thus becomes subject to the "clear public interest" test. Further, there are instances where seawalls and other shoreline protection structures are appropriate to protect private property rights, but such rights are not necessarily a "clear public interest."

The proposed increase in shoreline setbacks is significant, and if adopted as a state-wide standard will dramatically increase the number of shoreline setback variance applications that will be necessary for Oahu's coastal properties, both public (e.g., coastal highways and public recreation improvements) and private; a process which is both rigorous and lengthy. It will also drastically increase the number of nonconformities. These are the inevitable results of imposing a significant increase in setback requirement upon land which has already been subdivided and developed on the basis of a significantly lesser setback requirement.

The proposal to add a "clear public interest" test for all private facilities and improvements within the shoreline setback area will render shoreline setback variance requests involving private property all but impossible to support. Coupled with the proposed significant increase in shoreline setbacks, discussed above, the "clear public interest" test may render most existing shoreline subdivision lots on Oahu unusable. With no other available remedy (i.e., unable to grant a variance), there will be an inevitable sharp increase in judicial challenges involving regulatory takings. Since June 22, 1970, the subdivision of coastal property on Oahu has been based on the ability to accommodate a 40-foot shoreline setback; and, later a 60-foot setback for subdivision lots created along the shoreline after 1994. Imposing significant increases in setback requirements, which may be 140 feet or more in some areas, on established patterns of land development will result in a tremendous loss in value for countless private landowners. This will jeopardize the personal financial standing of affected families, and induce chaos among the holders of liens, insurers, and the other numerous interests in real property along the shoreline. People on Oahu have relied for 38 years on a 20- to 60-foot shoreline setback requirement. We feel strongly that the proposals to mandate a significant increase in the shoreline setback requirement and impose a "clear public interest" test for shoreline setback variance approvals are reckless.

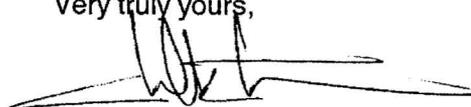
The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources
State House of Representatives
Re: Senate Bill 468, SD1
March 16, 2009
Page 4

It is appropriate, on the other hand, to clearly authorize coastal erosion rate methodologies for the establishment of shoreline setback lines. The amendments we are supporting would accomplish this, without otherwise imposing inappropriate mandates.

We strongly recommend that Senate Bill 468 be filed or amended to provide that: "The shoreline setback line may be established using a method including, but not necessarily limited to, an average annual shoreline erosion rate, and shall not be less than twenty feet from the shoreline."

Thank you for this opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David K. Tanoue', with a long horizontal flourish extending to the right.

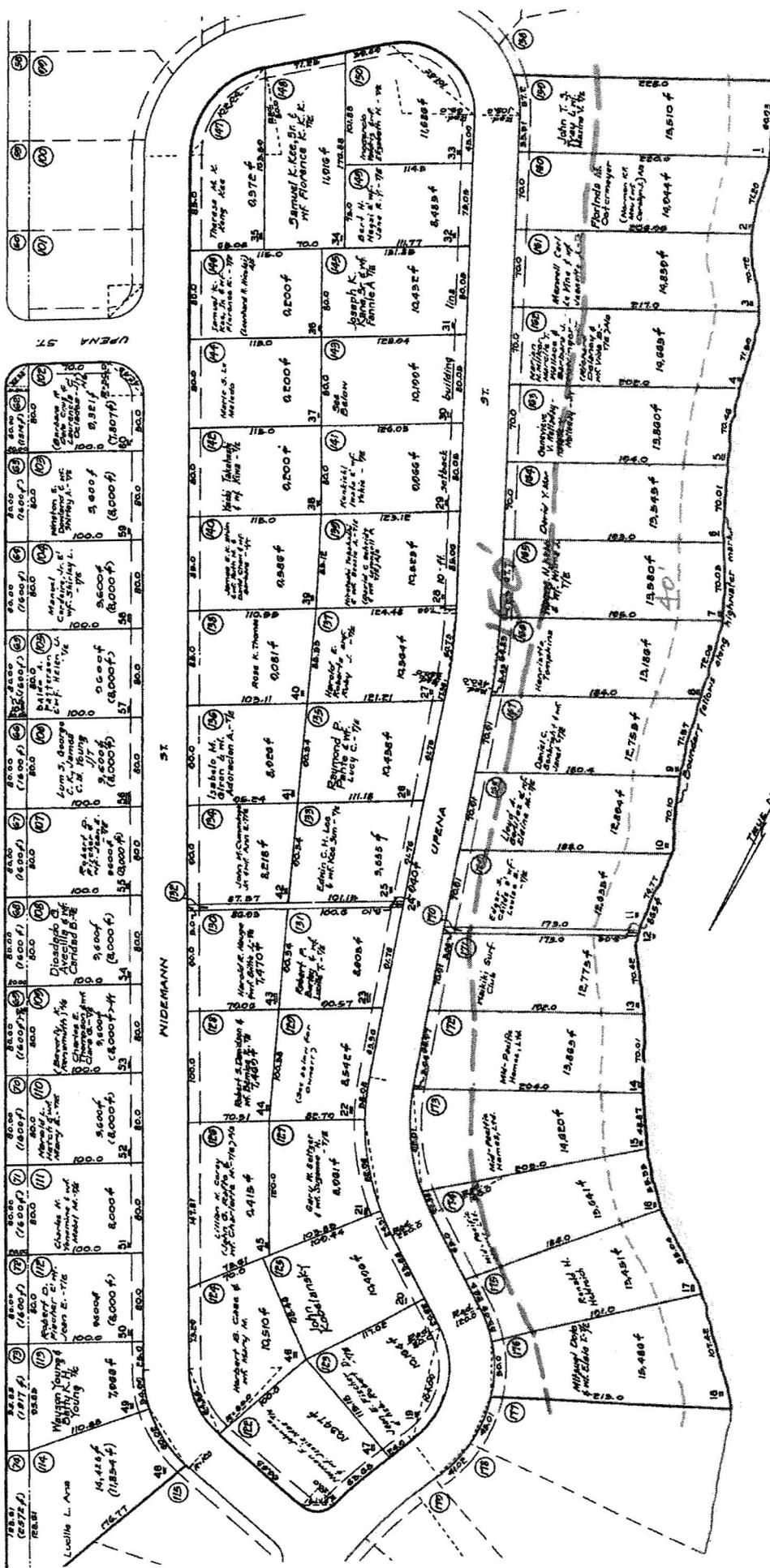
David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf
Attachment: Shoreline Tax Map Properties

sb468sd1-jpt.doc

HIGHWAY

FARRINGTON



UPENA ST

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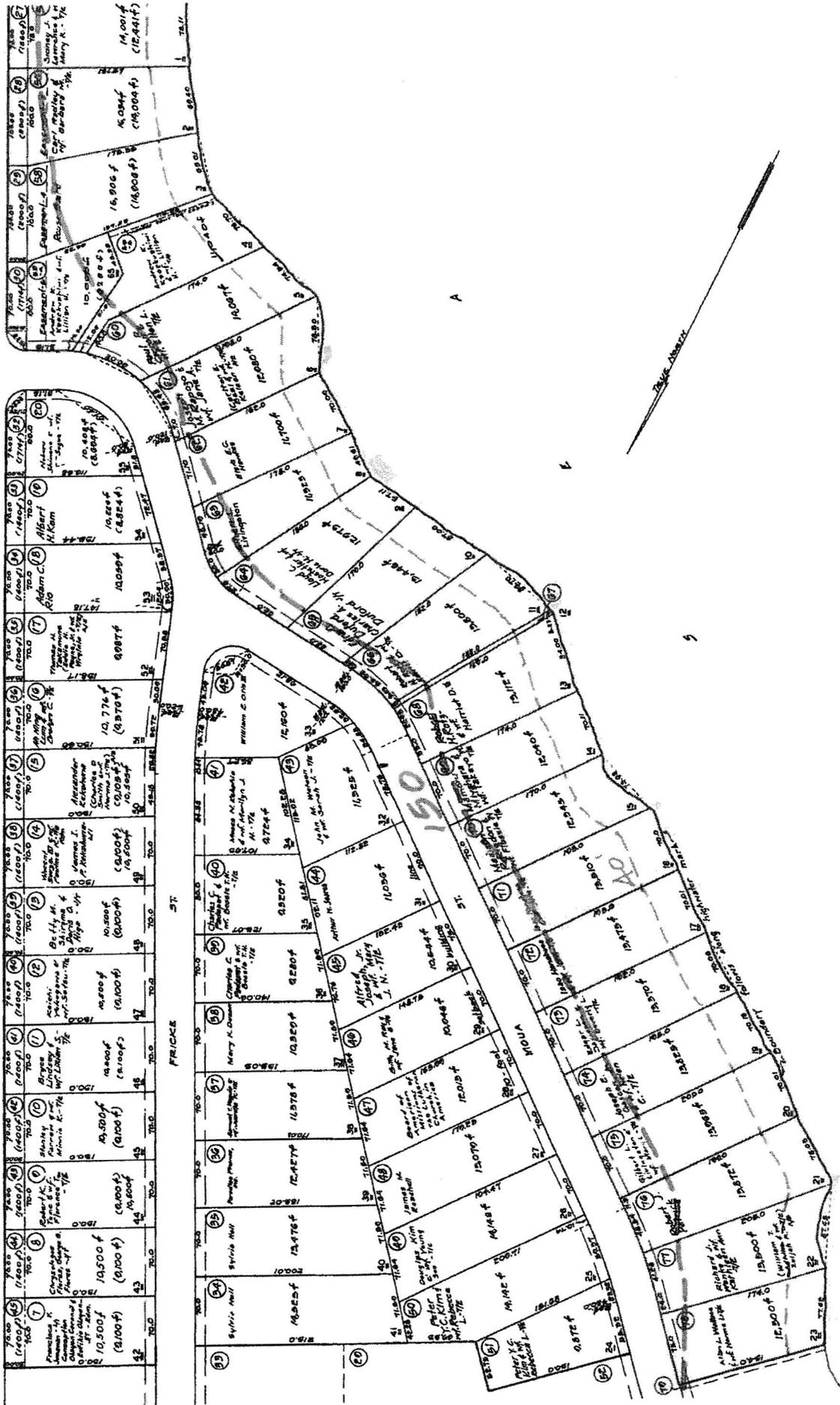
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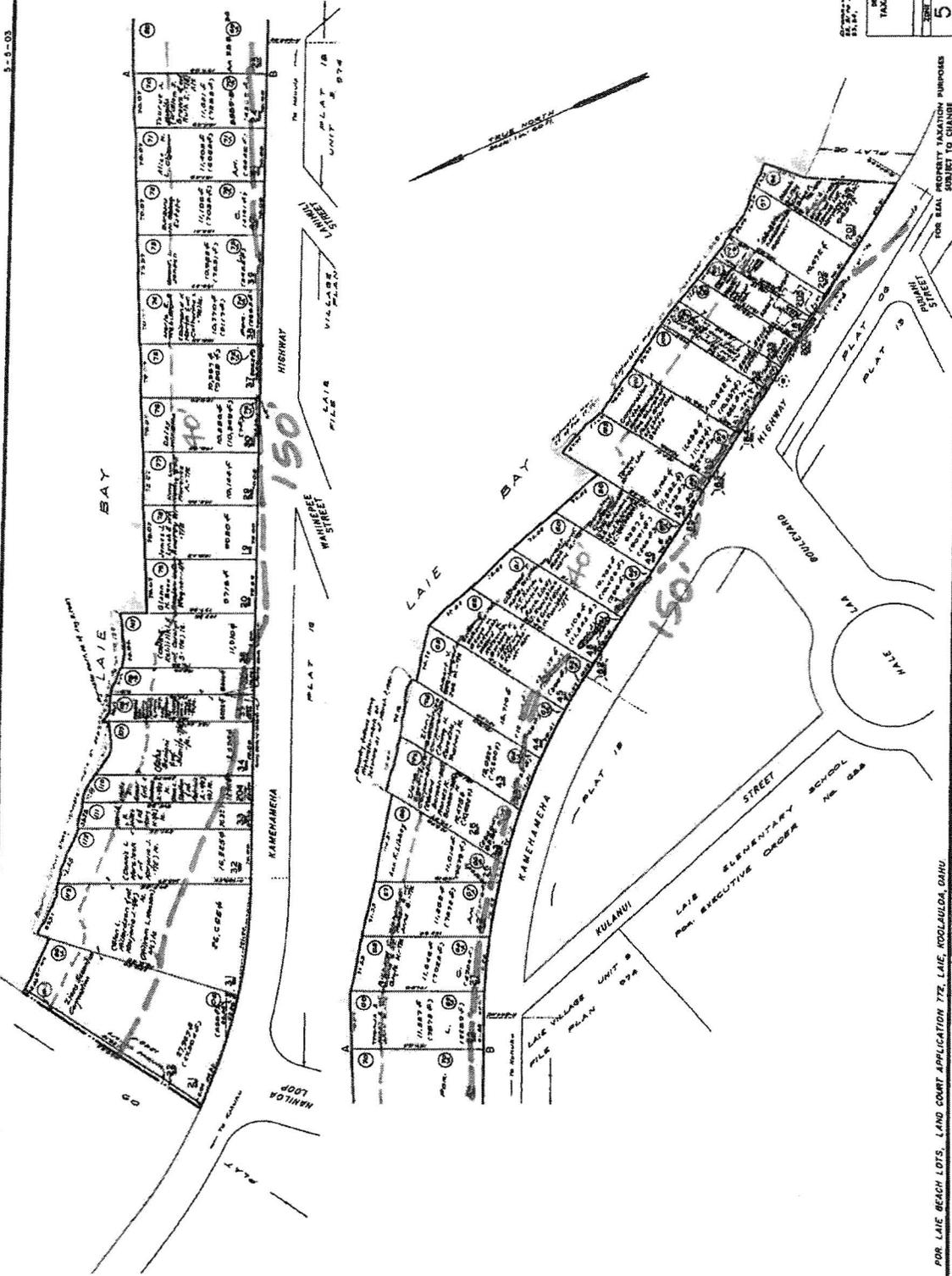
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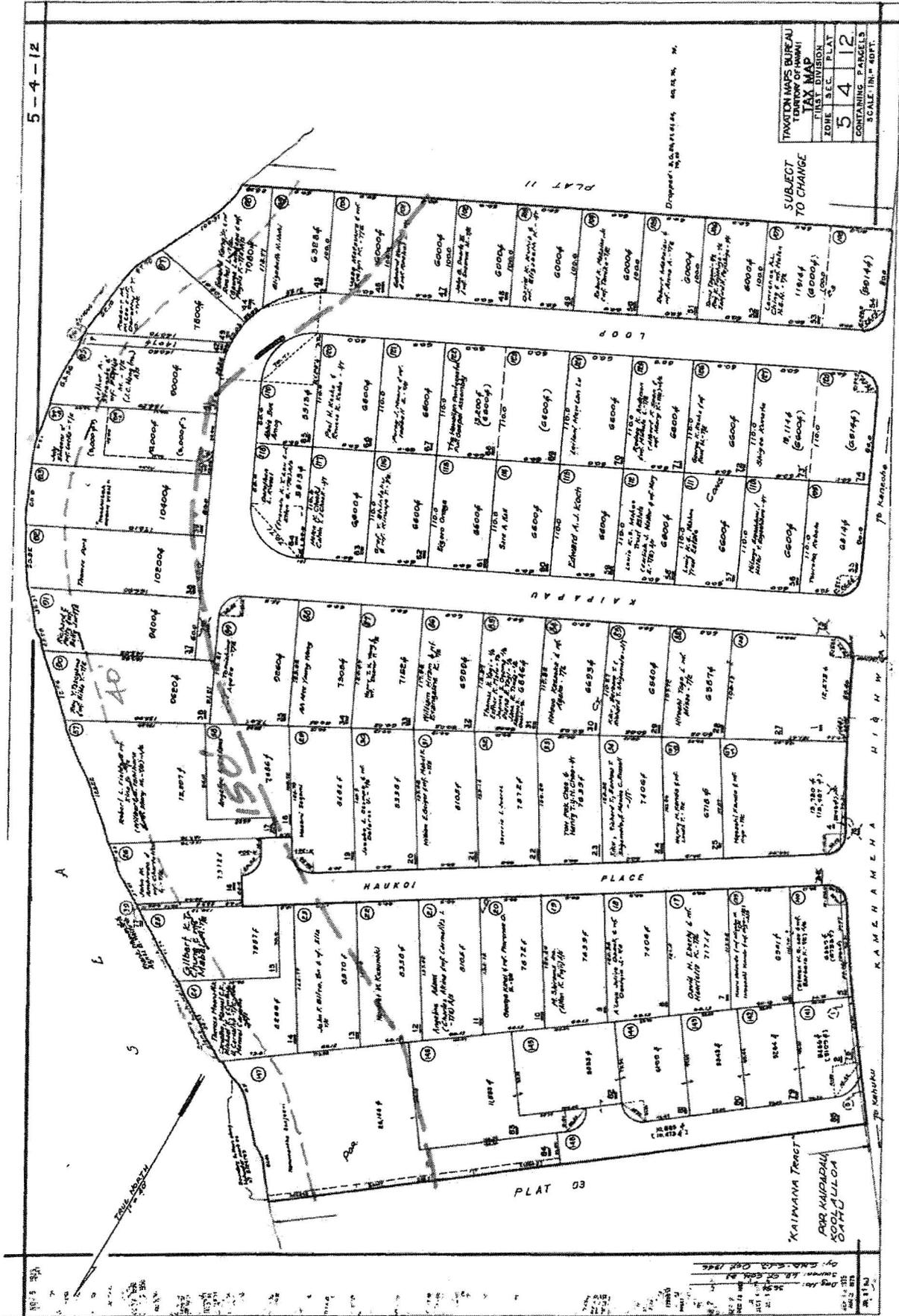


DEPARTMENT OF TAXATION TAXATION MAPS BUREAU STATE OF HAWAII	
TAX MAP	
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SCALE: 1" = 500 FT.	

FOR LAIE BEACH LOTS, LAND COURT APPLICATION T72, LAIE, KOOLAOLA, OAHU

RECORDS SECTION
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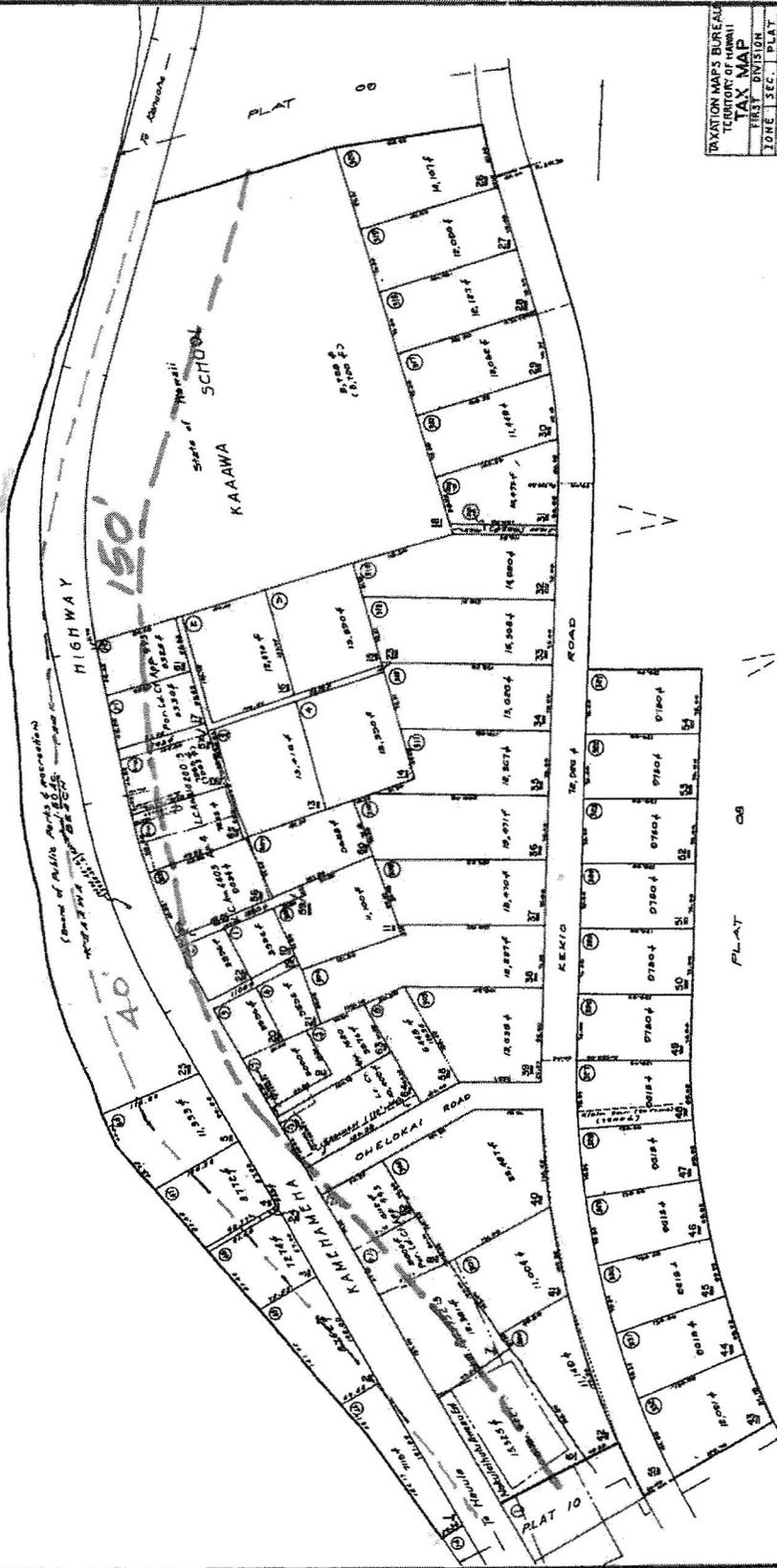
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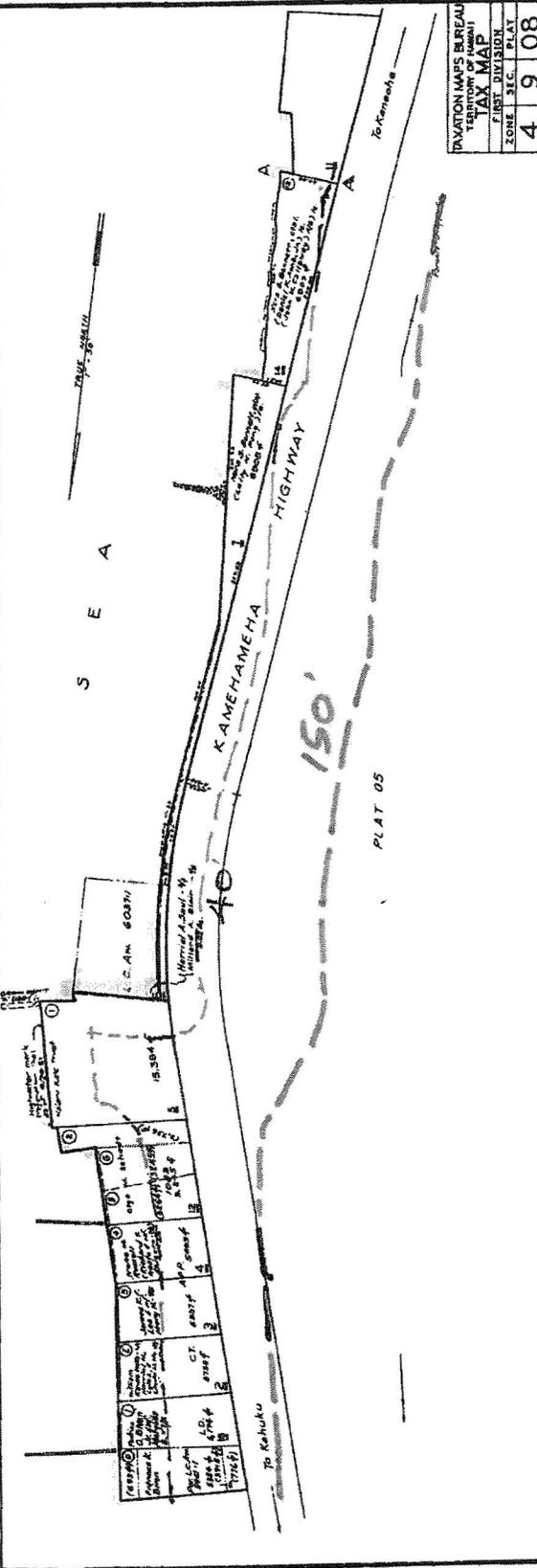
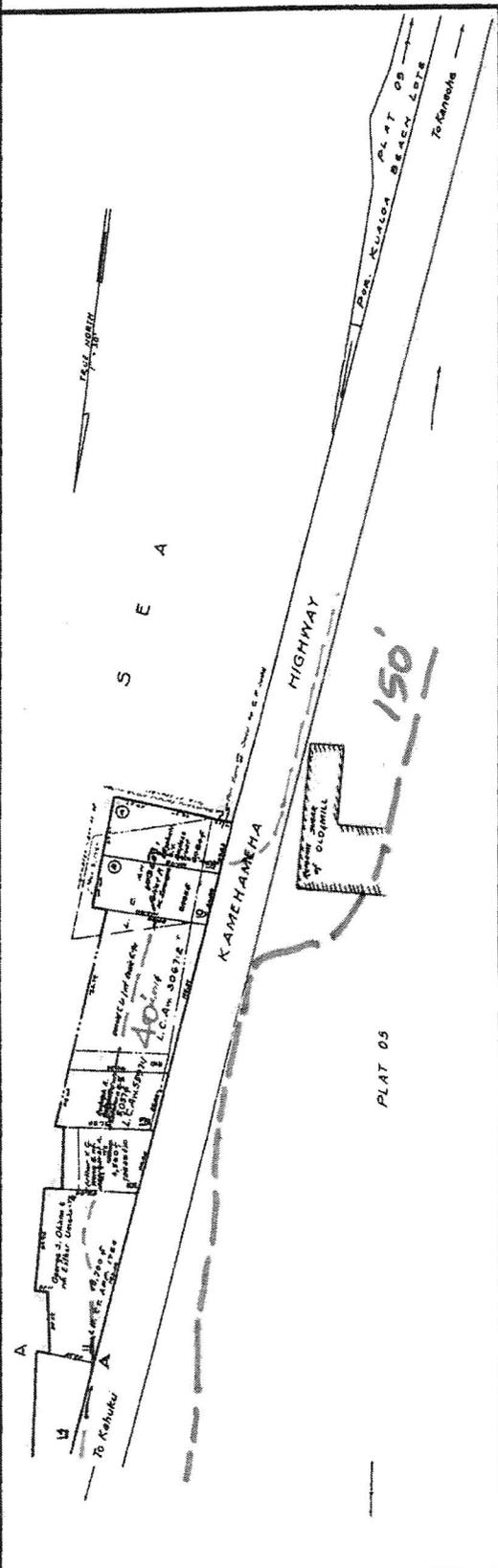


TAXATION MAPS BUREAU
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SCALE: 1 in. = 60 ft.

ADVANCE SHEET
SUBJECT TO CHANGE

POR. KAAWA BEACH LOTS, KAAWA, KOOLAULOA, OAHU

ONS. NO. 1000
 BY: M. W. L. & M. B.
 DATE: 10/1/1911
 SCALE: 1 in. = 60 ft.
 SHEET NO. 1000



TERRITORY MAPS BUREAU	CONTAINING PARCELS
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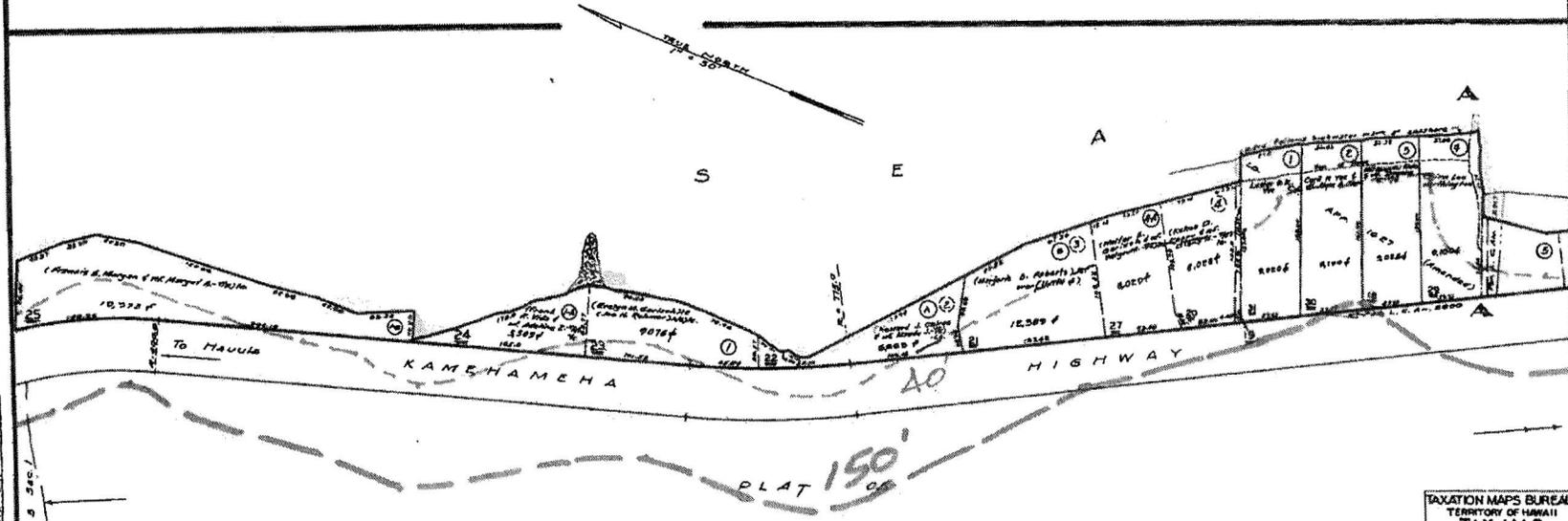
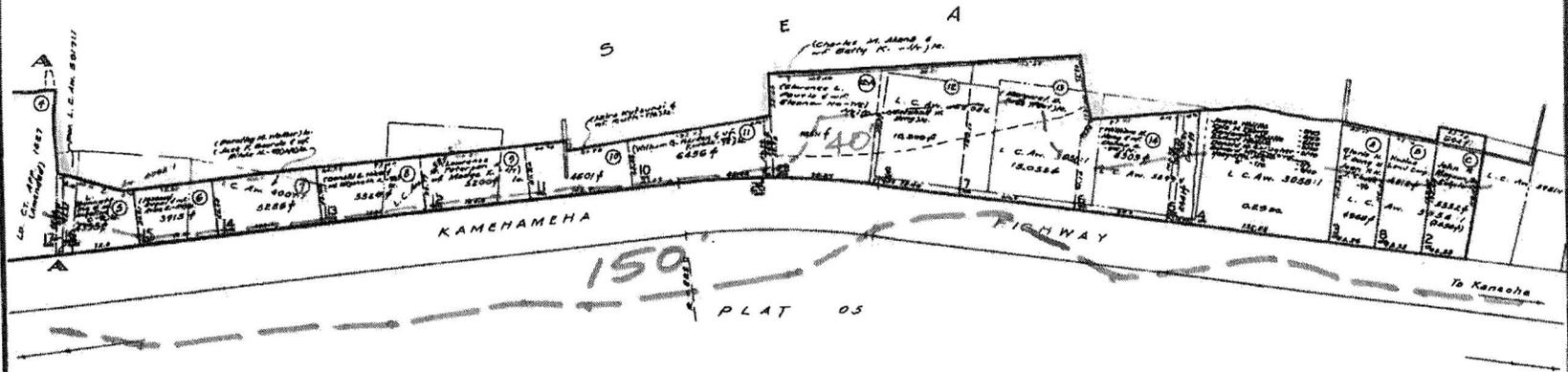
SUBJECT TO CHANGE

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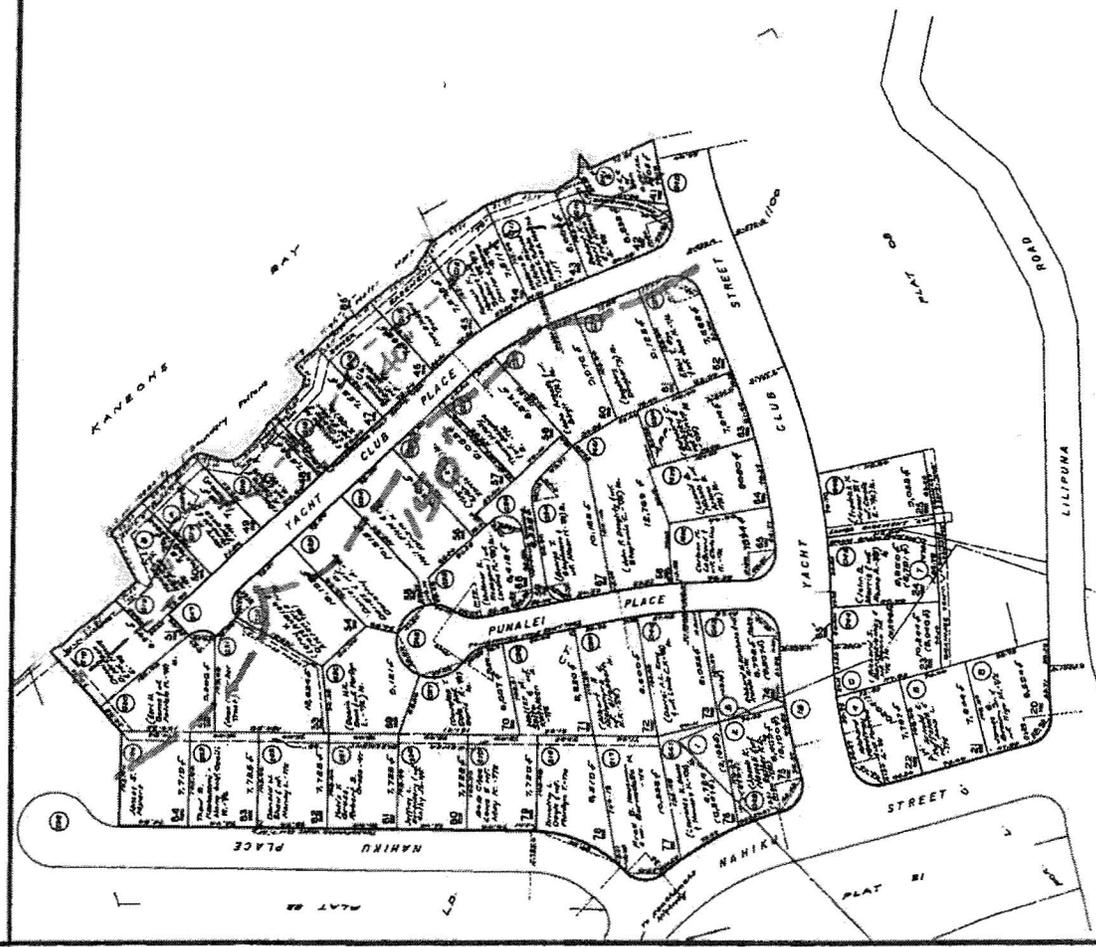
Day No. 1182
 Source - KUALA BEACH
 By H.M. BY DIST. 1941
 Zone 9 Sec. 1

NOTE: All lots owned by
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 Mrs. J. Brown - 1183
 Mrs. J. Brown - 1184
 Mrs. J. Brown - 1185
 Mrs. J. Brown - 1186
 Mrs. J. Brown - 1187
 Mrs. J. Brown - 1188
 Mrs. J. Brown - 1189
 Mrs. J. Brown - 1190

POR. KUALOA BEACH LOTS, KUALOA, KOOLAUPOKO, OAHU

SUBJECT TO CHANGE

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FIRST DIVISION		
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CONTAINING PARCELS		
SCALE: 1 IN. = 80 FT.		



DEPARTMENT OF TAXATION
STATE OF HAWAII
TAX MAP

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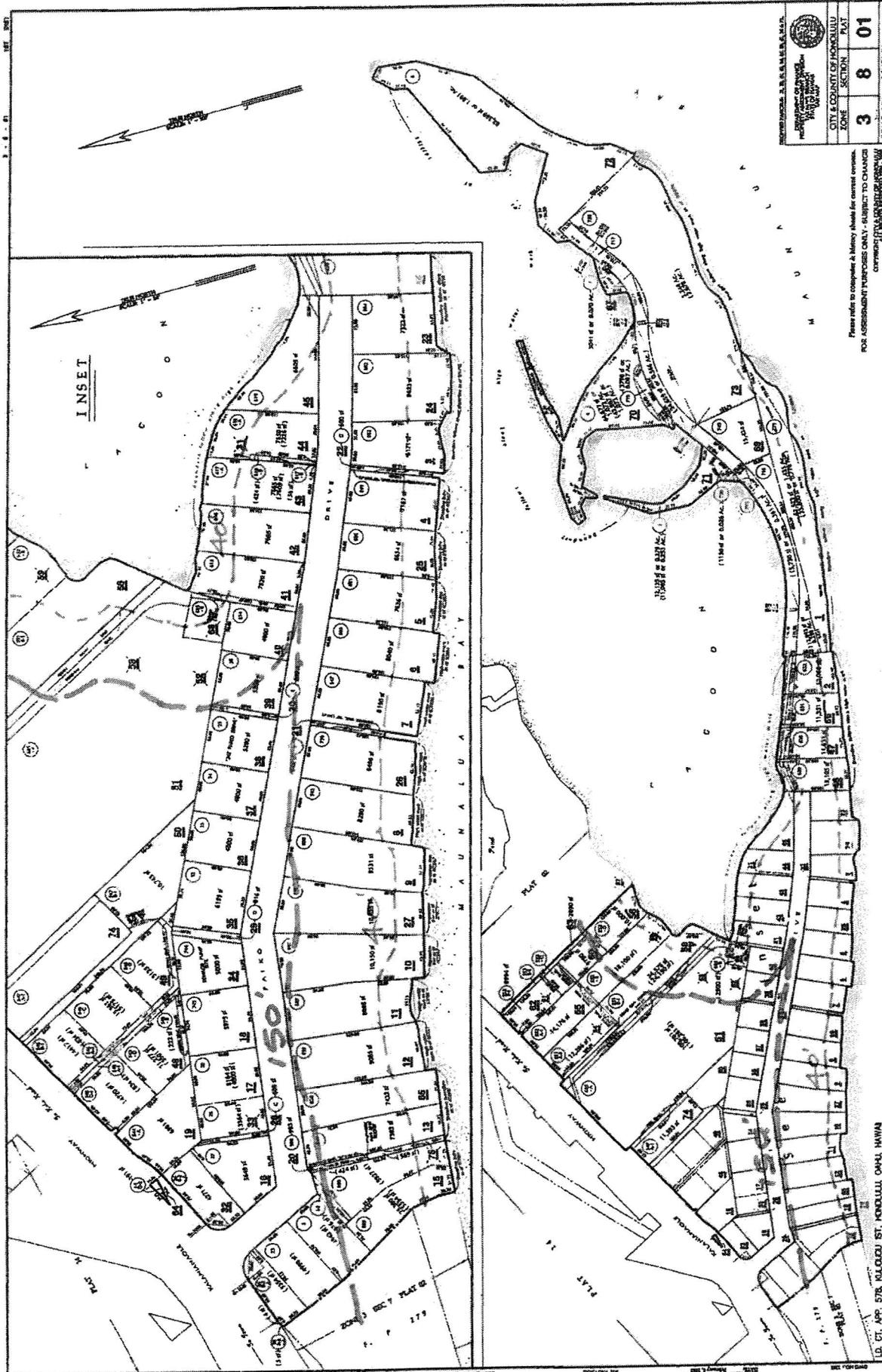
NOTICE: ALL LOTS SHOWN BY THIS MAP ARE SUBJECT TO THE REAL PROPERTY TAXATION LAWS OF THE STATE OF HAWAII. THE TAX MAP IS SUBJECT TO CHANGE WITHOUT NOTICE.

PREPARED BY: [Illegible]

FOR ALII SHORES, HEAIA, KOOLAUPUNO, OAHU (formerly part 4-6-03)

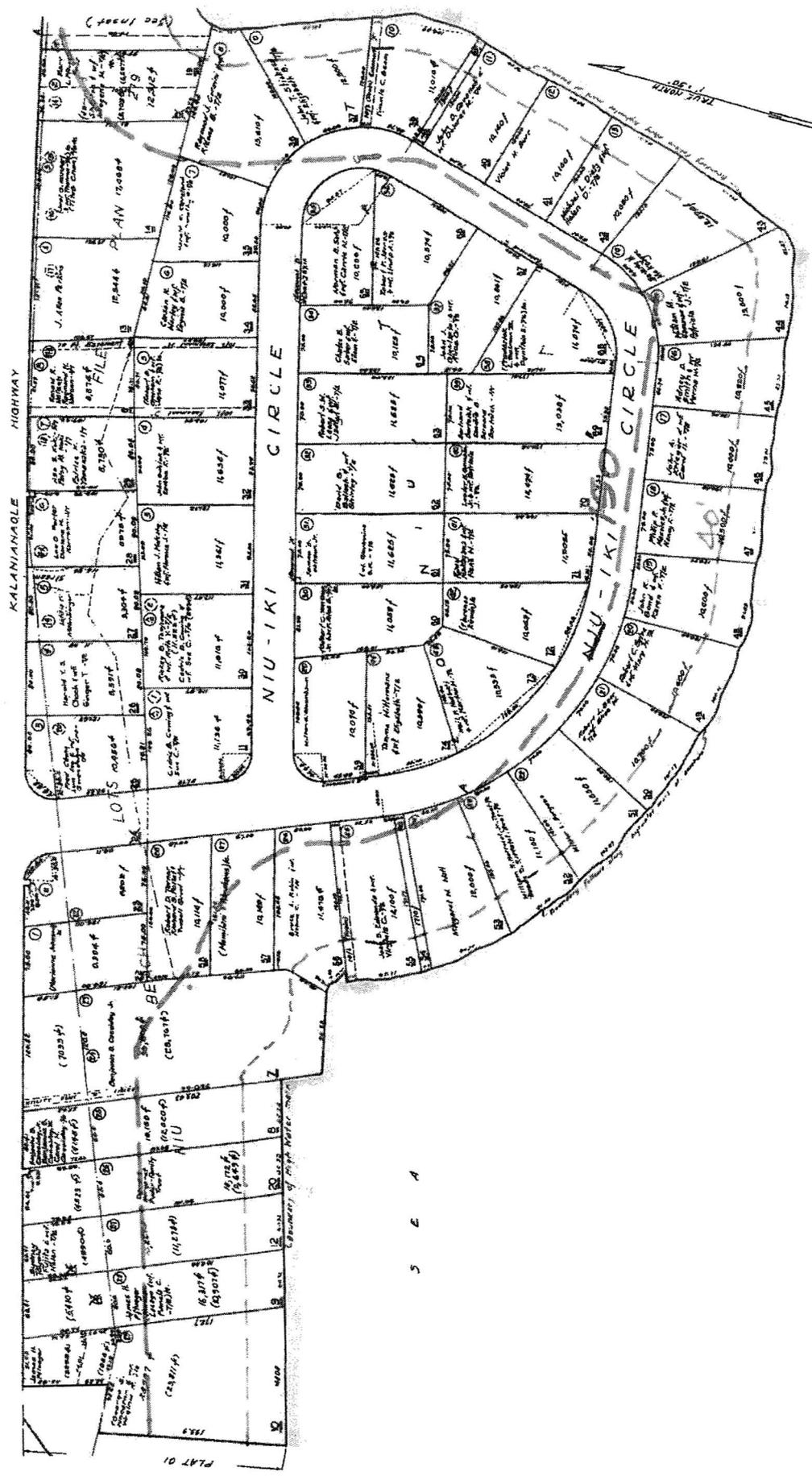
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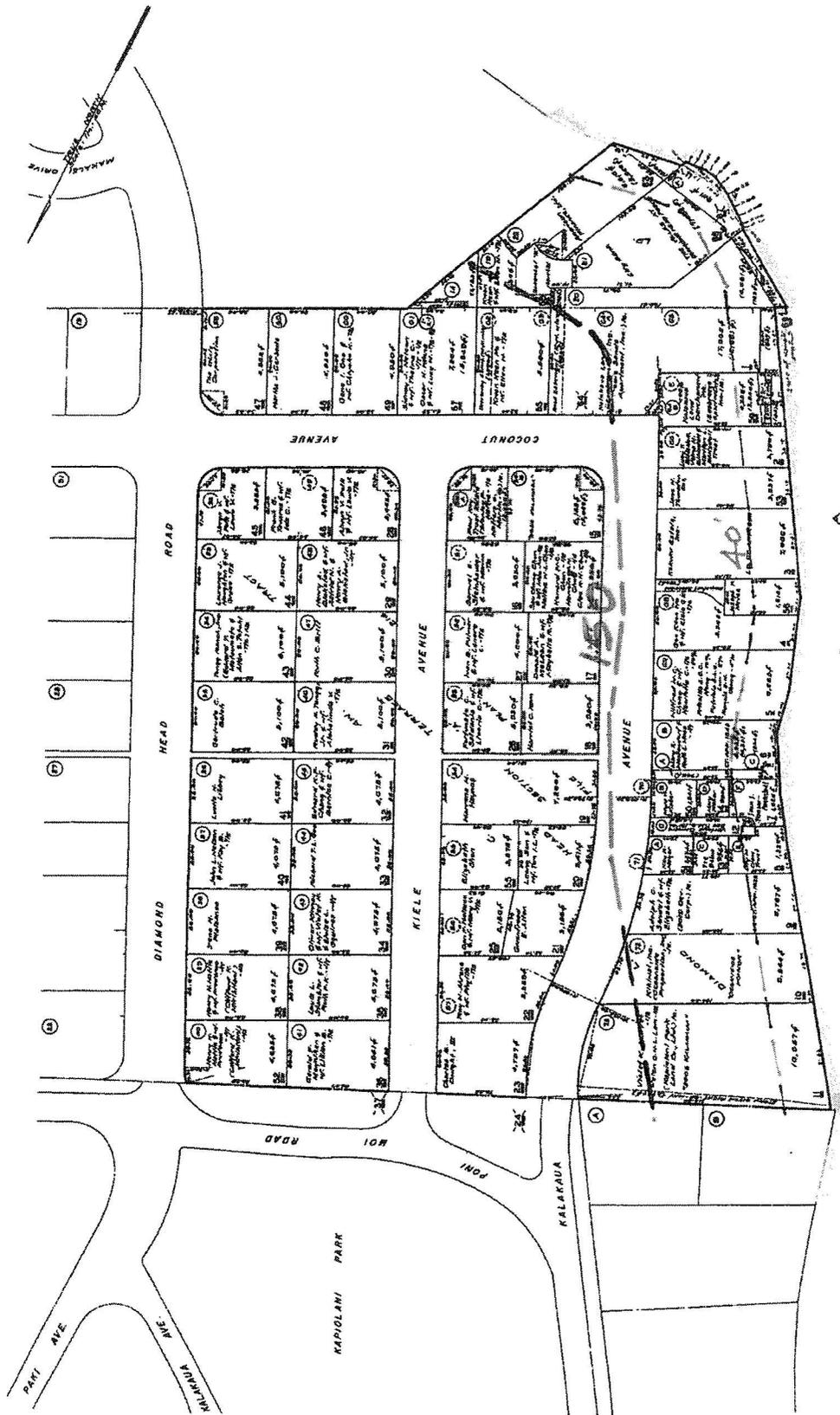


Please refer to computer & memory sheets for correct owner.
 FOR ASSESSMENT PURPOSES ONLY - SUBJECT TO CHANGE
 CORRECTED PLAT

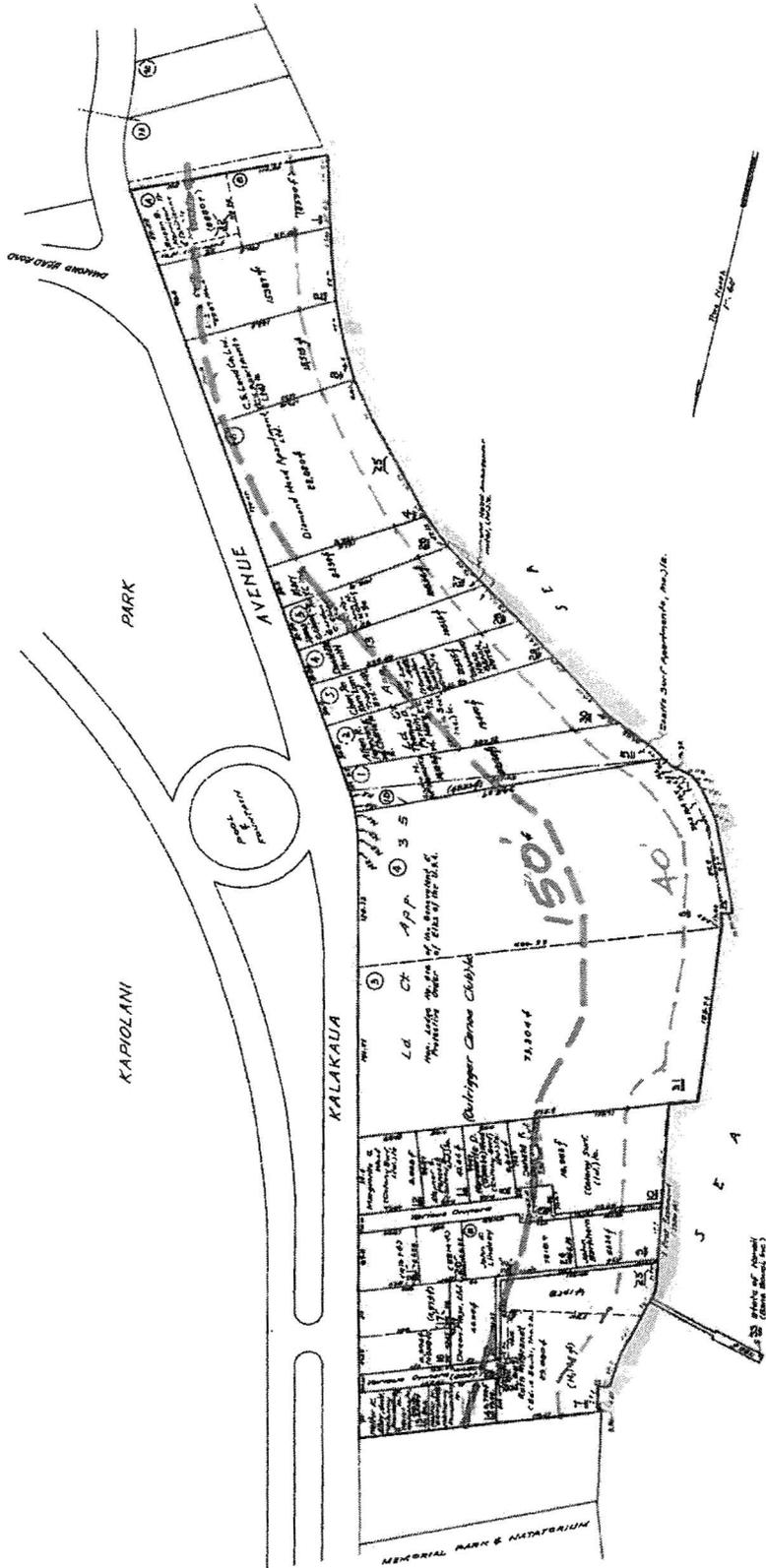
LD. CT. APP. 578, KILAUEA ST., HONOLULU, OAHU, HAWAII



3-7-02



3-1-33



3-1-55



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIL
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR
ABBEY SETH MAYER
DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

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

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Statement of
ABBEY SETH MAYER
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES
Monday, March 16, 2009
9:00 AM
State Capitol, Conference Room 325

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

Chair Ito, Vice Chair Har, and Members of the House Committee on Water, Land, and Ocean Resources.

We do not support SB 468, SD1 Relating to Coastal Zone Management. We prefer the language in SB 867, which is the Administration's bill.

The Office of Planning administers Chapter 205A, HRS, the Coastal Zone Management (CZM) law. We have the following concerns.

Pages 3, 9, 19 and 24 of SB 468, SD1 make various amendments pertaining to coastal hazards. We recommend use of a simplified coastal hazards objective as provided in SB 867. SB 867 also provides an amended definition of "coastal hazards" that ensures that the term is used consistently and avoids the redundant use of a list of coastal hazards throughout Chapter 205A.

Page 10 adds the phrase "and planning for present and future coastal zone development". It is neither the role nor function of the CZM program to plan for development. The program does plan for the management of coastal resources and this is already implicit in other parts of the statute. Therefore, we oppose this amendment.

In addition, we have the following comments on the bill:

1. Page 3, lines 18-20 amend Sec. 205A-2(b)(9) by adding "coastal dunes" and "natural barriers to the coastal hazards" to the objective of beach protection. Protecting dunes for public use and recreation, rather than as sensitive and vital

coastal ecosystems, is an inappropriate objective. Coastal dunes are already protected under the objective Sec. 205A-2(b)(4), HRS, "Coastal ecosystems."

Furthermore, Sec. 171-151, HRS, defines "beach lands" to be inclusive of "Dune systems." We recommend deleting the proposed amendments and revising the policy listed in Sec. 205A-2(c)(9), HRS, to read "Protection of beach lands." using the term "beach lands" for consistency among the statutes.

2. Page 4, line 10: it is redundant to add "for the general public" to §205A-2(c)(1)(B). The existing objective on recreational resources clearly provides recreational opportunities to the public.
3. Page 4, line 14: We do not support the inclusion of the term "repair" in §205A-2(c)(1)(B). We prefer the language in SB 867 emphasizing "restoration" rather than "repair" to provide a reasonable option to protect and preserve recreational resources. The connotation of "restoration" in dealing with resources is more meaningful and appropriate.
4. Page 4, line 17: We do not object to the addition of "coral reefs" as an example of coastal resources, although the existing objective and policy on coastal ecosystems already include "reefs" as a factor in preserving coastal ecosystems.
5. Page 9, line 8: The amendment deletes the term "economy" and substitutes the terms "infrastructure and utilities" thus making the language more limiting. This change will inhibit the program's ability to balance between the economy and environment, and disregards major economic sectors, such as tourism in determining coastal policies.
6. Page 10, line 2: We agree with this housekeeping change.
7. Page 14, lines 1-3: We do not object to this amendment.
8. Page 17, lines 1-4: We do not object to this amendment.
9. Page 18, lines 14 and 22: The term "substantial" is replaced with "significant." We note that "significant effect" is defined in Chapter 343, HRS. We are concerned that there may be ramifications and unknown consequences in making this change, and we are uncertain of whether or not the intent of the change was meant to reference the Chapter 343 definition.
10. Page 19, lines 12-18: The proposals are redundant. The concerns are addressed in §205A-26(2)(B) -- "That the development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature."

11. Page 21, line 5: We prefer and encourage the use of annual shoreline change rates in determining the shoreline setbacks. This approach should better protect beach process and reduce the threat from coastal hazards such as erosion. We prefer the language in SB 867 because it provides the Counties flexibility in setting appropriate standards for setbacks. On Oahu, for example, there are numerous shoreline lots which are too narrow to support development applying a 40-foot shoreline setback.
12. Page 22, line 14: We do not object to an increase in the minimum valuation of protection of a legal structure from \$20,000 to \$50,000. We acknowledge that costs have steadily risen while regulatory cost thresholds have not kept pace.
13. Page 22, lines 20-21; pages 23 and 24: There are several amendments pertaining to shoreline setbacks. We prefer the language in SB 867 which is an Administration bill.

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

LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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

Transmittal Cover Sheet for
Department of Land and Natural Resources Testimony

Date Submitted: March 13, 2009

Testifier's Name/Position/Title: Sam Lemmo, Ocean Conservation and Coastal Lands
Division Administrator

Committee the comments are directed to: HOUSE COMMITTEE ON WATER, LAND &
OCEAN RESOURCES (WLO)

The Date & Time of Hearing: Monday, March 16, 2009
9:00 AM, Conference, Room 325

Measure Number: SB 468 SD 1 RELATING TO COASTAL ZONE MANAGEMENT

Number of Copies the Committee is Requesting: In paper, 1 copies (including original) to
Room 438 in the State Capitol

LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
WATER, LAND, & OCEAN RESOURCES**

**Monday, February 16, 2009
9:00 am
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 468, SENATE DRAFT 1
RELATING TO COASTAL ZONE MANAGEMENT**

Senate Bill (SB) 468, Senate Draft (SD) 1 proposes to: 1) Require affected agencies to account for sea-level rise and minimize risk from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis, 2) Preserve public access and public shoreline access, 3) Extend shoreline setback to no less than 40 ft. from shoreline and 4) Require counties to account for annual erosion rates. The Department of Land and Natural Resources supports the need to update Chapter 205A, Hawaii Revised Statutes (HRS), with comments.

The initial drafting of Chapter 205A, HRS, was prior to a more comprehensive, science based understanding of sea level rise and its inclement impacts over the lifetime of coastal developments. Proper revision can enable the statute to accommodate dynamic coastlines, which migrate following a long-term trend, through utilization of state-of-the-science data and tools, as well as modern adaptation and hazard mitigation strategies. The amendments proposed in SB 468 SD1 make promising strides in this direction, and the Department supports their proposed changes with the following amendments:

- Recommend amending §171-58.5 and §205A-44, HRS, to redefine the acceptable sand placement area for stream, drainage, and canal cleaning, and maintenance work. This will allow the cleared sand to be placed within the shared sand system, rather than forcing it to be placed adjacent to the area cleaned.
- Recommend adding a language in §205A-2(b)7(A), HRS, to ensure public participation in planning activities for coastal resources and hazards.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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

- Recommend adding a new section in **§205A-2(c) 6, HRS**, to prevent the grading of dunes. As dunes are one of the most significant natural coastal hazard buffers, the Counties and State should be empowered to adequately protect them.
- Recommend amending **§205A-43(a), HRS**, to allow for the use of erosion rate data, where appropriate. As there are significant sections of coastline in Hawaii where erosion rate data is not relevant, it would allow the counties discretion in determining the appropriate methodology for establishing setbacks. We recommend the following language:
 - "The shoreline setback line shall be established using a method including but not limited to an average annual erosion and, where appropriate, accretion rates and shall not be less than forty feet inland from the shoreline. The department shall adopt rules pursuant to chapter 91, prescribing procedures for determining the shoreline setback line, and shall enforce the shoreline setback rules pertaining thereto. "
- Recommend amending the existing language for **§205A-43.5, HRS**. This section identifies Shoreline Setback Variance Applications that will not require a public hearing. Because of the potential impact of coastal activities, those variances not requiring public hearings should be limited to emergencies that require immediate response, thus we recommend removing sections (2) and (3).
- Recommend leaving the original language in **§205A-45(a), HRS**. The original language allows the counties to create larger setbacks, as needed, and will accommodate the use of average annual erosion rate data where it is appropriate.
- Recommend amending the proposed **§205A-45(c), HRS**, to accommodate using erosion data, to read as:
 - "The several counties, through rules adopted pursuant to chapter 91, or ordinance, or under existing authority, shall use the shoreline setback as a tool to minimize the damage from coastal hazards including but not limited to, tsunamis, hurricanes, wind, storm waves, flooding, erosion, sea-level rise, subsidence, and pollution. The setback shall consider shoreline erosion and, where appropriate, accretion data for setback purposes as appropriate. Measures such as early planning, variances for innovative design, and minimum buildable areas shall be considered;"

GOODSILL ANDERSON QUINN & STIFEL

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FACSIMILE TRANSMISSION

DATE: March 14, 2009

To:

NAME:	FAX NO.:	PHONE NO.:	SENT/OPERATOR
Rep. Sharon E. Har Vice Chair, Committee on Water, Land & Ocean Resources	586-8504	586-8500	

FROM: Mihoko E. Ito

PHONE: (808) 547-5683

RE: S.B. 468 SD1 – Relating Coast Zone Management
Hearing: Monday, March 16, 2009 at 9:00a.m.

MATTER NO: 102871

NUMBER OF PAGES WITH COVER PAGE: 2	
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Message:

Attached is testimony regarding SB468 SD1 from the Hawaii Association of REALTORS.

Thank you.

If you do not receive all of the pages or if they are illegible, please call the fax room at (808) 547-5600, ext. 528.

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**Hawai'i
Association of
REALTORS®**
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March 14, 2009

The Honorable Ken Ito, Chair
House Committee on Water, Land, & Ocean Resources
State Capitol, Room 325
Honolulu, Hawaii 96813

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

HEARING DATE: Monday, March 16, 2009 at 9:00 a.m.

Aloha Chair Ito, Vice-Chair Har, and Members of the Committee:

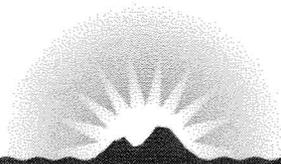
I am Myoung Oh, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **submits concerns** on S.B. 468, S.D. 1 which: (1) requires affected agencies to account for sea level rise and minimize risks from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis; (2) preserves public access and public shoreline access; and (3) extends the shoreline setback to not less than 40 feet from the shoreline and requires counties to account for annual erosion rates.

Extending the shoreline setback, based on annual erosion rates or a fixed distance, may not work in all situations due to a number of factors such as narrow lots or elevated plains. Rather, the individual counties should consider provisions to allow private property owners some flexibility in protecting their property such as what Kauai and Maui have done. Consideration should be made on a county by county basis through variances, exceptions, environmental assessments, hardship justification, and other conditions. Repairs to a lawfully existing structure, including nonconforming structures, should also be allowed pursuant to reasonable county provisions and ordinances.

HAR further adds that the County planning departments should be left the discretion to establish methods of determining coastal erosion rates and hazard maps that can be used as a basis for new shoreline requirements.

We believe these decisions are best left with the individual counties to reflect the unique lands, uses, and cultures of different counties.

Mahalo for the opportunity to testify.



MAUI TOMORROW FOUNDATION, INC.

Protecting Maui's Future

March 14, 2009

Mark Sheehan
President

SB 468

Rob Parsons
Vice President

Maui Tomorrow Foundation, Inc. strongly supports this bill to extend the shoreline setback for all construction to forty feet from the shoreline and requires the counties to account for annual erosion rates. Our current statewide setback (minimum of 20 feet) is dated and dangerous.

Trip Lynch
Treasurer

Given the realities of sea level rise caused by global climate change and the accompanying loss of shoreline-protecting coral reef, a policy of "managed retreat" makes the most sense to protect private property, taxpayers, and public shoreline.

Judith Michaels
Secretary

The threat of rising sea level is not speculative. Scientists have documented sea level rise and most project at least a one meter rise over the next century.

Lance Holter

Pushing buildings back from eroding waterlines is critical to the protection of life and property, the mitigation of coastal hazards, and the preservation of coastal resources.

Richard Michaels

Maury King

Maui Tomorrow Foundation urges the passage of SB 468, a timely bill to protect coastal properties.

Elle Cochran

Michael Duberstein

Mahalo,

Kai Nishiki

Irene Bowie
Executive Director

Irene Bowie
Executive Director



March 16, 2009

Representative Ken Ito, Chair
COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES
Conference Room 325
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Representative Ito:

Subject: Senate Bill No. 468 SD 1, RELATING TO COASTAL ZONE MANAGEMENT.

My name is Shane Peters, President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC is opposed S.B. No. 468 SD 1 as proposed.

We understand that the purpose of this bill is to require affected agencies to account for sea level rise and minimize risks from coastal hazards such as erosion, storm inundation, hurricanes, and tsunamis. It also attempts to preserve public access and public shoreline access; and extends shoreline setback to not less than forty feet from shoreline and requires counties to account for annual erosion rates.

The bill proposes to amend Chapters 46 and 205 HRS and, in general terms provide for:

1. Street Parking near public access areas;
2. Provide public access along public owned or used beaches;
3. Requires sea level rise to be considered when assessing coastal hazards;
4. Requires development to adequately plan for, among other things, sea level rise;
5. Establishes a minimum 40 foot setback from the shoreline or the average annual shoreline erosion rate, as determined by the county;
6. Requires counties to consider the average annual erosion rate when creating new parcels through the county subdivision process;
7. Removes the variance for shoreline improvements when the improvement is required to prevent hardship to the applicant;

8. Allows fixed structures only when there is a public interest being serviced even if the improvement is entirely within private property.

The bill expands the exactions on developments along the shoreline as it now attempts require public street parking and lateral shoreline access with the current requirement of a mauka-makai access.

Since most public beaches (*i.e.*, those lands makai of the shoreline) are considered unencumbered public lands and are open to the public, the proposed language still seems to require a developer to dedicate private lands along the shoreline for public access in addition to the current mauka-makai access.

We do not support legislation that would require private property owners to dedicate private lands along the shoreline for lateral shoreline access in exchange for final approval of a subdivision. If that is the intent, we believe the appropriate avenue to secure this lateral shoreline access would be through the use of eminent domain in which the owners would be justly compensated. It bears mentioning in this context that the United States Supreme Court has held in a similar context that a requirement of a lateral beachfront access was “an out-and-out plan of extortion,” and that if government “wants an easement ... it must pay for it.” See *Nollan v. California Coastal Com’n*, 483 U.S. 825, 837, 842 (1987).

With respect to the issue of sea level rise, climate change and the resulting sea level rise has only recently gained wide spread discussion. While we agree that it is a concern, it is difficult to grasp how the proposed changes to Chapters 46 and 205 HRS could improve in this area. We believe more information will be required because it is difficult to predict with any certainty, the rate at which sea level rise and other climate change related impacts will occur. That being the case, it is difficult to identify mitigation measures that will be effective if the time frames cannot be predicted accurately.

Developing a proper and systematic response to sea level rise or all of the other potential “Disaster Management” issues resulting from worldwide climate change is a valid concern. While the focus of this legislation appears to be on individual shoreline developments or projects, it would appear that this issue should be pursued through a more comprehensive government action plans to respond to different disasters. Project disaster/emergency management plans would not address the larger regional issues which would be outside the scope of the EA/EIS. Furthermore, in the event of a disaster, we believe that the appropriate government agency (Civil Defense, FEMA, etc.) would supersede an individual project disaster/emergency management plan. Once a government plan is developed, it would be appropriate for Civil Defense or the appropriate government agency to request that the individual project incorporate the government plan into the projects disaster/emergency management plan and this information would be included in the EA/EIS as agency comments.

Finally, extending setbacks based on annual erosion rates or a fixed distance is fine as long as some provisions are made to allow private property owners some flexibility in protecting their property. The bill would establish a certain standard on a go-forward basis for new parcels being created; however, it appears to penalize existing shoreline property owners as it removes the any allowance for protection of private property, which in the past was viewed as a hardship. Under the proposed language, protection of existing property must meet a “public interest” test now. Meaning that a family must show a public interest for protecting their existing house or improvement. We believe that that would set an unreasonable standard for the many existing shoreline property owners.

For the reasons stated, we ask that this bill be held.

Thank you for the opportunity to express our views on this matter.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

March 16, 2009, 9:00 A.M.

(Testimony is 2 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 468, SD1

Aloha Chair Ito and Members of the committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, strongly supports SB 468, increasing the protection of Hawaii's coastlines from climate change and erosion.

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

Managed Retreat

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

The threat of rising sea level is not speculative. The recent acceleration of melting in Greenland, other arctic areas, and Antarctica has shocked climatologists globally. In 2007 the Arctic ice cap melted to half what it was just four years ago. According to the United Nations, data from the world's largest glaciers in nine mountain ranges indicate that between the years 2004-2005 and 2005-2006 the average rate of melting and thinning more than doubled. *Nature Geoscience* reported in January of 2008 that sea levels may rise five feet or more this century. Rising sea level and its



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Robert D. Harris, Director

related impacts will literally change the landscape of Hawai'i as we know it. We will have to redraw the map of our islands.

Significant Shoreline Setback Not Without Precedent

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

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

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

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

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

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

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

Ultimately, SB 468 would prevent inappropriate construction too close to the shoreline. When dwellings and buildings are built too close to the shore, beach-destroying seawalls are often requested when erosion threatens to undermine the structures.

Thank you for the opportunity to testify.

Testimony for SB468 on 3/16/2009 9:00:00 AM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Saturday, March 14, 2009 10:03 PM

To: WLOtestimony

Cc: [REDACTED]

Testimony for WLO 3/16/2009 9:00:00 AM SB468

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Susan Bradford

Organization: Individual

Address:

Phone: [REDACTED]

E-mail: [REDACTED]

Submitted on: 3/14/2009

Comments:

Testimony for SB468 on 3/16/2009 9:00:00 AM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Saturday, March 14, 2009 5:24 PM

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Testimony for WLO 3/16/2009 9:00:00 AM SB468

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Lance Holter

Organization: Hawaii Democratic party

Address: [REDACTED]

Phone: [REDACTED]

E-mail: [REDACTED]

Submitted on: 3/14/2009

Comments:

The Hawaii Democratic party at the 2008 State Convention passed the resolution ENVIR 08-15 Protect Hawaii Marine Resources and therefore made this part of the Hawaii Democratic Platform. The sustainability of those resources, including water quality and shoreline access are directly related to shoreline development, and adequate 40 foot set backs from the ocean will preserve access and protect life and property from sea level rise, both of which are of paramount importance to all who live in an Island environment, as well as, preserving the quality of life for future generations.

Consider that our Environment is the Hawaii Economy in all of your decision making. Please support Senate Bill 468.

Mahalo,

Lance Holter, Chairman, Maui Democratic party

Testimony for SB468 on 3/16/2009 9:00:00 AM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Saturday, March 14, 2009 7:47 AM

To: WLOtestimony

Cc: [REDACTED]

Testimony for WLO 3/16/2009 9:00:00 AM SB468

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Robert Wintner

Organization: Individual

Address:

Phone: [REDACTED]

E-mail: [REDACTED]

Submitted on: 3/14/2009

Comments:

SB 468 will set a 40 foot shoreline setback minimum + the rate of erosion x 100 feet. A shorter setback of 20 feet will only leave us exposed. Current knowledge of sea level rise predicates a bare minimum of 40 feet along with the changing rate of erosion.

Testimony for SB468 on 3/16/2009 9:00:00 AM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, March 15, 2009 9:56 AM

To: WLOtestimony

Cc: [REDACTED]

Testimony for WLO 3/16/2009 9:00:00 AM SB468

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Bob Babson

Organization: Individual

Address: [REDACTED]

Phone: [REDACTED]

E-mail: [REDACTED]@hawaii.rr.com

Submitted on: 3/15/2009

Comments:

Please vote yes on this bill. We must do everything possible to protect our environment for future generations and tourists to enjoy. Mahalo!

Testimony for SB468 on 3/16/2009 9:00:00 AM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, March 15, 2009 10:06 AM

To: WLOtestimony

Cc: [REDACTED]

Testimony for WLO 3/16/2009 9:00:00 AM SB468

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: janice palma-glennie

Organization: Individual

Address:

Phone:

E-mail: [REDACTED]

Submitted on: 3/15/2009

Comments:

SB 468 would extend the shoreline setback for all construction to forty feet from the shoreline -- a bare minimum to protect nearshore waters from compromise. The bill would also require counties to account for annual erosion rates. This legislation is an important first step towards protecting our beaches from the impact of sea level rise.

Mahalo.