

Strong Support for SB468 on shoreline setback

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Sent: Monday, March 16, 2009 8:59 AM
To: WLOtestimony
Importance: High

LATE TESTIMONY

TESTIMONY IN STRONG SUPPORT OF SB 468 RE: SHORELINE SETBACKS

TO: Chair Ken Ito House WLH
Hearing Date: March 16, 2009

Aloha:

On behalf of all who cherish our shorelines and understand the future impacts of global climate change and inevitable sea level rise, I offer testimony in **STRONG SUPPORT** of SB486 that would increase the shoreline set back to 40 feet for all new construction in the coastal zone. We must prepare now to protect our beaches and our fringing reefs. . .and preserve our lateral access to those public lands that define our lives in these islands.

Mahalo,

Wayne Takamine

LATE TESTIMONY



Via Capitol Website

March 16, 2009

House Committee on Water, Land & Ocean Resources
Hearing Date: Monday, March 16, 2009, 9:00 a.m. in CR 325

Testimony in Opposition to SB 468, SD1: Relating to Coastal Zone Management

Honorable Chair Ken Ito, Vice Chair Sharon E. Har and
Members of the House Committee on Water, Land & Ocean Resources:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide our testimony **in opposition to SB468, SD1**. LURF is opposed to this bill, based on, among other things, the following:

- SB 468, SD1, which increases the minimum setback lines, deletes the traditional "hardship" test for variances and imposes a new "clearly in the public interest" test for variances on private property, **will cause most existing shoreline subdivision lots to be unusable and constitutes an unconstitutional regulatory taking of** property without compensation, which will result many legal actions against the State and Counties;
- The bill does not include a purpose and intent section and **lacks sufficient facts or justification** for:
 - changes in the definitions relating to "development" (Section 3);
 - alteration of the special management guidelines (Section 4);
 - increasing the minimum shoreline setbacks from "not less than twenty feet and not more than forty feet" to "not less than forty feet" (Section 5);
 - addition of new setback requirements that counties must establish shoreline setback lines at "a distance not less than the average annual erosion rate based on a hundred-year projection, in addition to the newly proposed 40-foot minimum distance (Section 7);
 - deletion of shoreline variances for "hardships" caused by shoreline erosion;
 - addition of a new requirement that variances on private lands must be "clearly in the public interest" (Section 8);
- Setting a **minimum 40-foot setback will cause extreme hardship on many existing private residences and other existing shoreline lots** which are too

- narrow to support development, even with a 40-foot setback;
- The proposed increases in the minimum setback (40-feet, plus 100-year projected average annual erosion rate), **will create a multitude of non-conforming lots and will result in a dramatic increase in shoreline variance applications** from private land owners as well as from government agencies (for shoreline roads and recreational facilities);
 - **The existing 20-foot minimum setback law should be maintained to afford the counties flexibility** to allow justified and reasonable use of private shoreline properties up to a minimum 20-foot shoreline setback, which is currently provided in the existing state law;
 - Establishing a fixed setback line as proposed by **this bill, does not allow for unique situations** where the setback may not be warranted (such as rocky or hardened and established shorelines);
 - Instead of prescribing a minimum setback area (as required in this bill), the Legislature should **honor and respect the setbacks established by the Counties** based on their historic erosion rates in a particular area or the distinctive shoreline and topography of each County;
 - **The “hardship” test has been the traditional and legally recognized test for granting variances.** In practice, it has been a reasonable procedure for the responsible county agencies to review the specific use proposed, physical characteristics of the property and other relevant considerations. The bill does not cite any justification for deleting the “hardship” test;
 - While the “clear public interest test” is justifiable an appropriate for private action within the public shoreline area (as provided in the current law), **the “clear public interest test” is not justifiable and is inappropriate for application to private property;**
 - As noted in the testimony of the Department of Planning and Permitting of the City and County of Honolulu (DPP), **this legislation is premature**, as DPP has a pending coastal erosion study which is expected to be completed in two years. New mandatory shoreline setback laws should not be implemented until the City has had the opportunity to evaluate the coastal erosion results, together with existing patterns of development and lot configurations and other

Conclusion. We **oppose SB 468, SD1**, and respectfully recommend that this bill be **held**. The bill **lacks any facts or justification** for changing the definition of setbacks along the shoreline; it could result in the **unconstitutional taking** of property without compensation; and it **does not allow for unique situations** where the setback may not be warranted (rocky or hardened and established shorelines). We understand that some of the Counties are in the process or have adopted set backs based on historic erosion rates in a particular area or county. Instead of prescribing a minimum setback area (as required in this bill), the **Legislature should allow the Counties to use their own County data as a baseline**, which would provide some certainty and consistency in determining setbacks within each County, based on the unique shoreline and topography of each County.

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