

Bill 42, CD1 Testimony

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Councilmember Brandon Elefante, Chair
Councilmember Ester Kia`aina, Vice Chair
Zoning and Planning Committee, Honolulu City Council

Re: Comments on Bill 10 CD1 (2022) – Land Use Ordinance (“LUO”) Amendments Relating to Use Regulations; Bill 41 (2022) – Shoreline Setbacks; Bill 42 (2022) – Special Management Area (“SMA”)

Aloha Chair Elefante, Vice Chair Kia`aina, and members of the Zoning and Planning Committee,

Thank you for taking on the challenge of updating Honolulu’s land use, shoreline, and SMA ordinances. We agree that provisions in these ordinances should be revised to reflect new realities and objectives in Honolulu. As an attorney who has been involved in land use in Honolulu for more than 20 years, I offer the following comments on Bills 10, 41, and 42 for your consideration.

I. Bill 10 (2022) CD1 – LUO Amendments Relating to Use Regulations

1. Changes to Farm Dwellings

Bill 10 requires that 50 percent of the lot area of a lot containing a farm dwelling be occupied by crop production or livestock keeping. This requirement would increase to 75 percent under the proposed CD1. CD1 makes other changes as well. Further proposed amendments would return the minimum area requirement to 50 percent.

I am concerned that these collective changes will make it difficult to keep land in agriculture and instead force owners to seek to redistrict and rezone their lands. The dual use of agricultural lands—being able to conduct other uses, such as renewable energy, tourism and weddings, has allowed us to retain large areas of land within the agricultural district. We should be encouraging dual uses rather than making them more difficult.

I am also concerned that the minimum area requirement cannot be equitably applied. Agricultural lots have a wide variety of sizes, soil qualities and usable areas. While it may be practicable to put 50 or even 75 percent of many lots in active agriculture, smaller lots and lots with areas of limited utility, such as gulches, may

not be able to meet either threshold. It would be inequitable to deny this latter class of lots a farm dwelling.

Nor is it clear how the law would be enforced. The Department of Planning and Permitting cannot be expected to survey every agricultural lot in the City.

Hawai'i Revised Statutes ("HRS") 205-4.5(a)(4) already requires that a farm dwelling in the Agricultural Land Use district be located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. This limitation is enforceable by a fine of up to \$5,000.

It would be prudent to enforce existing standards before new standards are adopted. It would be prudent to determine whether there will be unintended consequences for any new standards that are adopted.

2. Multi-Unit Dwellings

The inclusion of multi-unit dwellings in the B-1 and B-2 districts is a welcome change. The change will facilitate the creation of mixed-use walkable neighborhoods throughout our community. DPP's previously-submitted testimony implied that the Proposed CD1's changes to the multi-unit dwelling standards will allow residential units on the ground floor of spaces that contain sufficient commercial uses. While that appears to be the intent of the new subsection (B) in the Proposed CD1, we recommend revising the standards provision to clarify that subsections (A) and (B) are not overlapping requirements as follows:

"(2) Standards:

(A) In the B-1 and B-2 zoning districts, multi-unit dwellings are permitted;

- (i) if located above the first floor of a building occupied by a permitted principal non-residential use. A residential lobby of up to 1,500 square feet of floor area and other necessary points of ingress or egress may be located on the ground floor. All other residential uses must be located above the non-residential use;

~~[(B) In the B-1 and B-2 zoning districts, multi-unit dwellings are permitted on:]~~

- (ii) on Zoning lots larger than 4 acres, but smaller than 7 acres, with a minimum of 10,000 square feet of nonresidential floor area developed on the lot;

(iii) on Zoning lots larger than 7 acres with a minimum of 40,000 square feet of nonresidential floor area developed on the lot; or

(iv~~ii~~) on Zoning lots with a minimum nonresidential floor area ratio of 0.3;

provided that a pedestrian and bicycle access path a minimum of 8 feet in width is provided from adjacent rights-of-way to both residential and nonresidential uses on the zoning lot.”

II. Bill 41 (2022) – Shoreline Setbacks

1. Repairs to Nonconforming Structures

Bill 41 amends ROH Section 23-1.6 to limit repairs to nonconforming structures to a cumulative value of fifty percent or less of the replacement cost of the structure over a ten-year period. Previously, this provision only required that the repairs not increase the nonconformity.

Owners should be able to repair and maintain their structures as long as they do not increase the nonconformity. Forced dilapidation of existing structures is not in the best interest of our community.

2. Sea Level Rise Exposure Area

Bill 41 and Bill 42 incorporate the Sea Level Rise Exposure Area (“SLR-XA”) in developing shoreline setback standards. SLR-XA uses the projected sea-level rise modeling that was adopted by the Hawai’i Climate Change Mitigation and Adaptation Commission as part of the 2017 Hawai’i Sea Level Rise Vulnerability and Adaptation Report. The modeling is depicted on the Hawai’i Sea Level Rise Viewer.

The model on which the SLR-XA is based was not designed for Honolulu’s complex shorelines and coastlines. The SLR-XA is an overlay of three models: passive flooding, annual high wave flooding and coastal erosion. To develop the coastal erosion modeling, the modeling begins with historical erosion rates measured from individual transects located 20 meters apart along the coastline. The model then makes two critical assumptions. First, the model assumes erosion will continue at the same rate through the year 2100 even in areas where erosion is or could be inhibited by natural or engineered conditions, like seawalls or cliffs. Second, the model assumes

an all-sand environment, which responds much differently to sea level rise than environments with elements like reefs and rocky headlands.

The result of these assumptions is an inaccurate prediction of the impact that sea level rise will have on Honolulu when considered at the parcel-level scale. The limitations of the coastal erosion modeling are carried over to the SLR-XA.

With respect, SLR-XA should be used as a policy tool as it was originally intended and not enshrined as regulation.

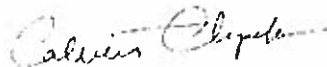
III. Bill 42 (2022) – Special Management Area

Concurrent Processing of Environmental Disclosure Documents

Bill 42 discontinues the practice of allowing concurrent processing of environmental disclosure documents with SMA major permits as provided in ROH Section 25-3.3(c)(1). Concurrent processing helps to streamline the development process. Eliminating concurrent processing will only make approvals take longer to complete and cost more to complete. We do not need changes that slow down the process.

Please let us know if you would like to discuss any of our comments or proposed revisions further. Thank you again for your time.

Very truly yours,



Calvert G. Chipchase

for

CADES SCHUTTE

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