

BILL042(22)

Testimony

MISC. COMM. 52

PLANNING AND THE ECONOMY (P&E)

PLANNING AND THE ECONOMY (P&E) Meeting

Meeting Date: Feb 9, 2023 @ 09:00 AM

Support: 8

Oppose: 1

I wish to comment: 6

Name: Elizabeth Benyshek	Email: chair@oahu.surfrider.org	Zip: 96786
Representing: Self	Position: Support	Submitted: Feb 7, 2023 @ 09:59 AM
<p>Testimony:</p> <p>Aloha,</p> <p>I am writing to express my strong support for Bill 42, which would provide safeguards for new development against coastal hazards. Unfortunately, the community and buyers are often not aware of coastal hazard like shoreline erosion and the effects of high surf if they have not spent a large amount of time here and along the coast. This bill would keep City regulations up-to-date and better prepare everyone for future sea level rise. Please support this advancement. Thank you for your time and consideration.</p> <p>Elizabeth Benyshek Chair, Surfrider Foundation O'ahu Chapter</p>		
Name: Lauren Kaiser	Email: lkaiser15@gmail.com	Zip: 96813
Representing: Self	Position: Support	Submitted: Feb 7, 2023 @ 01:56 PM
<p>Testimony:</p> <p>Bill 42 is necessary to keep City regulations up-to-date and consistent with the State's Coastal Zone Management Act recently updated by Act 16 in 2020 to provide more safeguards for new development against coastal hazards like storm surge, high tide, waves, and shoreline erosion. Over the last century, Oahu has lost more than five miles of beach due to coastal erosion and sea level rise, and at least 60% of our beaches are chronically eroding. If we take no action, impacts from 3.2 ft. of sea level rise are estimated to result in \$12.9 billion in economic losses of structures and land. The impacts of sea level rise will increase and accelerate this century and beyond. This bill ensures new development along the shoreline is better prepared for those impacts without putting our precious cultural and natural resources at risk.</p>		
Name: Marvin Heskett	Email: mhesketts@me.com	Zip: 96816
Representing: Self	Position: Support	Submitted: Feb 7, 2023 @ 08:06 PM
<p>Testimony:</p> <p>Aloha,</p> <p>Please pass Bill 42 in order to update the cities code to match the updated coastal zone management act. It's imperative that we plan now for the changes we are experiencing and will continue to experience as our climate and sea level become more impacted in the near future.</p> <p>Mahalo, Marvin</p>		
Name: Camile Cleveland	Email: policy@oahu.surfrider.org	Zip: 96816
Representing: Surfrider Foundation O'ahu Chapter	Position: Support	Submitted: Feb 7, 2023 @ 08:52 PM
Name: Kittana Wagener	Email: kwagener@hawaii.edu	Zip: 96815
Representing: Self	Position: Support	Submitted: Feb 8, 2023 @ 08:46 AM
<p>Testimony:</p> <p>Aloha Councilmember Kiaina and the Planning and the Economy Committee,</p>		

My name is Kittana Wagener and I am a resident of Georgia and currently living in Honolulu, HI. I am a volunteer and member of the Surfrider Foundation O'ahu Chapter and I am in strong support of Bill 42 to keep City regulations up-to-date and consistent with the State's Coastal Zone Management Act and to provide more safeguards for new development against coastal hazards like storm surge, high tide, waves, and shoreline erosion.

I support this bill because this bill will guarantee that new development along the shoreline is better prepared and protected in order to ensure that our cultural and natural resources do not become at risk. Climate change is also becoming a more prevalent issue. With this bill, it would help ensure that City regulations are met and that O'ahu is better protected from the effects of climate change.

It is inevitable that the sea-level will continue to rise over time. It is also time to take action in order to prevent an issue from growing further. Please support that the regulations are kept up-to-date and to protect our beaches from further harm.

Mahalo for the opportunity to testify.

Kittana Wagener

Name: Dr. Chip Fletcher	Email: fletcher@soest.hawaii.edu	Zip: 96734
Representing: Climate Resilience Collaborative	Position: Support	Submitted: Feb 8, 2023 @ 10:56 AM

Name: Ivan Lui-Kwan	Email: iluikwan@starnlaw.com	Zip: 96813
Representing: Self	Position: Support	Submitted: Feb 8, 2023 @ 11:23 AM

Name: Kathleen Pahinui	Email: pahinuik001@hawaii.rr.com	Zip: 96791
Representing: Self	Position: I wish to comment	Submitted: Feb 8, 2023 @ 07:54 PM

Testimony:

Aloha Committee Chair Kia'aina and Committee Members -

Mahalo for taking up Bill 42 again. This bill is so important to our North Shore community - I respectfully request that neighborhood boards must be informed about all SMAs - minor and major - and if the board has questions about a minor, they can request a presentation prior to any DPP approval.

Too many developers with multiple parcels or large ones try to segment their projects to keep it under \$500,000. They also will be vague about what they are doing and how much it will cost - we have two projects on the North Shore where this has and is happening. The DPP planners generally rely on the documents submitted and understandably will take what they are given at face value. From our community's perspective, it is too easy to fudge the project parameters and numbers to get under the value limit and the community is completely left out of the process and has little to no recourse to stop or at least slow down a project that may not be in the best interests of the area and residents.

Mahalo for your time and consideration.

Kathleen M. Pahinui

Waialua Resident

Name: Denise Antolini	Email: antolinid@gmail.com	Zip: 96712
Representing: Self	Position: Support	Submitted: Feb 8, 2023 @ 09:20 PM

Testimony:

Aloha Planning Committee Chair Kia'ina, Vice Chair Cordero, and Members of the Committee,

I write in strong support of BILL 42 (2022), CD1 – "SPECIAL MANAGEMENT AREA. Updating ROH Chapter 25, relating to the special management area, and to incorporate amendments made by Act 16, Session Laws of Hawaii 2020, to HRS Chapter 205A, the State Coastal Zone Management law. (Bill passed Second Reading and Public hearing held on 9/7/22; Committee postponed action on 9/22/22)"

I am a North Shore resident and have lived in Ppkea since 1998. From 1992-1998, I lived "one house off the beach" on Ke Nui Road, the Sunset Beach area shoreline that has been experiencing acute erosion and suffering from a tangle of illegal seawalls and burritos, houses teetering or falling into the sand, and a tragically degraded public beach.

As law professor dedicated to environmental law and protection, and having taught Ocean and Coastal law courses, I was honored to be a member of the North Shore Coastal Resilience Working Group, led by Surfrider Foundation, Sea Grant, and SSFM, which focused on the science, governance, and policy problems and solutions for this area.

The Working Group met from 2021-2022 and released a report in Oct. 2022 (https://20811975.fs1.hubspotusercontent-na1.net/hubfs/20811975/web-North-Shore-Coastal-Erosion-Report_102122_Web.pdf).

Part of the reports recommendations call for improved law and governance of our shorelines, such as the changes to the SMA ordinance proposed in Bill 42.

The City Council has had excellent presentations and guidance on this bill from its own OCCSR, State CZM, and Dr. Fletcher.

In short, based on my personal and professional experience, the City and County of Honolulu should follow that wise advice from the experts and modernize ROH 25 to align with Act 16.

Mahalo for the opportunity to testify.

Denise Antolini
Ppkea resident, Law Professor

Name: Racquel Achiu	Email: rhachiu@gmail.com	Zip: 96791
Representing: Self	Position: I wish to comment	Submitted: Feb 8, 2023 @ 10:12 PM

Testimony:

Aloha & Mahalo for your consideration in my testimony. My name is Racquel Achiu North Shore District 2) resident. I would like to express how CRITICAL BILL 42 is to our district. Specifically, The North Shore community is overwhelmed & hugely impacted by projects, by developers, as well as, individual property owners, who manipulate, misrepresent or eliminate details of their projects/intentions in seeking SMA permits. By providing minimal and/or inadequate information of a project, the applicants/owners/developers avoid transparency, accuracy and more importantly, meeting necessary criteria of a SMA permit & project. Currently, applicants seeking an SMA MAJOR (exceeding \$500k) are required to inform/present their plans to the Neighborhood Board. I respectfully ask that you consider that Neighborhood Boards be informed and/or review ALL SMA's, MINOR & MAJOR. (Ideally any project that has the potential to impact the footprint & daily life of a community, regardless of being in a SMA, should be directed to the appropriate Neighborhood Boards, Community Associations etc.)

TOO MANY projects are submitted by applicants, "under value" with misleading details to avoid necessary and appropriate review by boards and associations. Information provided in applications aren't certified. DPP relies on the accuracy of the applicants submittal. These tactics by applicants further lead to continued (and intentional) non-compliance, non-permitted, mis-use of lands, non-certified actions to advance & compete their projects. These actions adversely impact our communities. It is unfair for a community to be stripped of their ability to consider and contribute to a process that ultimately impacts the future of the community. Mahalo

Name: Patricia Lee	Email: consulfrhi@gmail.com	Zip: 96823
Representing: Self	Position: I wish to comment	Submitted: Feb 9, 2023 @ 02:14 AM

Testimony:

Chair Say and Members of the Zoning and Planning Commission:

I am a lifelong Hawaii resident and owner of property along the Waimanalo shoreline and respectfully request that Bill 42 not be passed out of committee to the full Council at this time.

Postponing any action on proposed Bill 42 is the prudent course of action which will allow your committee time to gain sufficient insight into coastal erosion and sea level rise and arrive at a reasoned solution. Researching geographical areas with similar coastal challenges both in Hawaii and worldwide, the success of their approaches and solutions; consultation with legal experts to determine the legitimacy and constitutionality of the proposed legislation to avoid legal challenges, delays and adverse rulings; consulting with the most qualified scientific experts regarding the efficacy of the proposed legislation; ensuring that the extreme proposed measures of this bill will indeed help achieve the goal of mitigating erosion and restoring Hawaii's shoreline; weighing the benefits of the proposed legislation and the negative impact upon Hawaii's shoreline homeowners; ensuring that the legislation is equitable and not discriminatory with respect to homeowners vs. hotels and commercial enterprises, are merely some of the reasons why passing this bill out of committee is premature. Additionally, Hawaii's shoreline residents have had insufficient notice and time to weigh in on the ramifications and grave impact this Bill will have on their homes and the ability to maintain them. We are all aware that premature, hasty decisions, i.e. reactions to the impact of climate change and coastal erosion about which we are all concerned - could actually result in unintended negative consequences rather than having a beneficial effect. Allotting time for consultation with homeowners, experts and the community is essential to a finding a successful legislative solution to mitigating erosion and safeguarding homeowners' properties in Hawaii. For the foregoing reasons, I urge you to prudently postpone passing Bill 42 out of committee.

Mahalo for your consideration.

Patricia Y. Lee, Ph.D, J.D.

Name: Sandra Sarkissian	Email: sandrasark@yahoo.com	Zip: 96795
Representing: Self	Position: I wish to comment	Submitted: Feb 9, 2023 @ 06:31 AM

Testimony:

Councilmember Brandon Elefante

Chair, Zoning and Planning Committee Honolulu City Council

Subject: Bills 41 Shoreline Setbacks and 42 Special Management Area

Dear Councilmember Elefante and Members of the Zoning and Planning Committee,

I am writing to you regarding Bills 41 - Shoreline Setbacks and 42 - Special Management Area. I am reaching out today as the owner of a property along the shoreline in Waimanalo and am deeply concerned regarding Bills 41 and 42, which appear would have a direct and significant impact on property owners like myself and my neighbors. I am surprised that we were not notified or even made aware of these bills when they were introduced, or when they went to the full Council. My neighbors and I have not had time to fully understand the direct impacts that these changes would have on our properties; but, it appears that these revisions would make it much more difficult to repair existing homes and maintain properties. If passed, Bills 41 and 42 would add more red tape to already existing shoreline protection measures and could curtail future efforts to protect our properties from severe coastal erosion. I respectfully request a hiatus on passing Bills 41 and 42 out of your committee to the full Council. Please allow us the opportunity to understand how these bills would affect our properties so that we can provide direct input into this now rushed process. I believe that postponing a full Council vote until more residents have time to review Bills 41 and 42 would be a prudent measure.

Mahalo for considering my request for more time to learn about Bills 41 and 42.

Sincerely,

Sandra Sarkissian

41-459 Kalaniana'ole Hwy. Waimanalo, HI 96795

Name: Robert Armstrong	Email: bob@armstrongbuilders.com	Zip: 96819
Representing: Self	Position: Oppose	Submitted: Feb 9, 2023 @ 07:36 AM
Name: Stephen and Mari Ann Keithahn	Email: skeithahn@aol.com	Zip: 96795
Representing: Self	Position: I wish to comment	Submitted: Feb 9, 2023 @ 07:55 AM
<p>Testimony:</p> <p>Dear Council Chair Kia'ina and Members of the Planning and the Economy Committee, Subject: Bill 42</p> <p>We own shoreline property in Waimanalo, and it appears that my neighbors and I would be directly and significantly impacted by Bill 42. Sadly, we were not notified or made aware that this bill was again under consideration. We respectfully request a hiatus on passing Bill 42 out of Committee to the full Council to allow us the opportunity to understand how this bill would affect our properties and to provide direct input into this process. Postponing a Committee vote until more residents have had time to review Bill 42 would be a prudent and respectful measure. Thank you for your consideration and for your service to our community.</p> <p>Mahalo, The Keithahns</p>		
Name: Calvert Chipchase	Email: cchipchase@cades.com	Zip: 96813-4202
Representing: Cades Schutte, LLP	Position: I wish to comment	Submitted: Feb 9, 2023 @ 08:05 AM



2/9/2023

Committee on Planning and the Economy
City and County of Honolulu
Honolulu, Hawai'i 96813

Aloha Chair Kia'āina, Vice Chair Cordero, and Members of the Committee on Planning and the Economy,

Position: Support Bill 42 (2022), CD1.

The Surfrider Foundation is a national nonprofit organization dedicated to the protection and enjoyment of our ocean, waves, and beaches. Surfrider maintains a network of over 150 chapters and academic clubs nationwide, including 4 chapters in the Hawaiian Islands. The Surfrider Foundation focuses on many aspects of the environment such as coastal protection, plastic pollution, and water quality.

I am testifying in strong support of Bill 42 (2022), CD1 (hereafter "Bill 42"), as relates to the city's Special Management Area codified at Revised Ordinances of Honolulu Chapter 25. I support Bill 42 which would update the Special Management Rules to adhere to the State's Coastal Zone Management Law, updated by Act 16 (2020), which incorporated more safeguards for new development against coastal hazards like storm surge, high tide, waves, and shoreline erosion.

The coastlines of Hawai'i are facing severe chronic erosion that is being exacerbated by climate change and sea level rise (SLR). 60 percent of the beaches on O'ahu face chronic erosion, and over five miles of O'ahu beaches have already been lost to erosion.¹ Further, O'ahu faces unique challenges as Honolulu has the highest potential in the state for SLR-induced economic losses,² and the homes and infrastructure on the island are already starting to collapse due to shoreline erosion and SLR.³ Shoreline erosion and SLR pose a complicated threat to the islands that require complex solutions to solve – Bill 42 is an important part of that solution, as it will increase the resilience of O'ahu's shoreline and coastal communities to the impacts and hazards of SLR.

SLR and beach erosion are some of the issues of greatest concern to our volunteers, and we appreciate the consideration of important solutions such as this bill. Thank you for your consideration of this testimony in support of Bill 42 submitted on the behalf of the Surfrider Foundation O'ahu Chapter and all of our members who live on the island and visit to enjoy the many coastal recreational opportunities offered by all of the island's coastlines.

Sincerely,

Camile Cleveland
Volunteer Policy Coordinator
Surfrider Foundation, O'ahu Chapter

¹ Fletcher, C.H., Romine, B.M., Genz, A.S., Barbee, M.M., Dyer, Matthew, Anderson, T.R., Lim, S.C., Vitousek, Sean, Bochicchio, Christopher, and Richmond, B.M., 2012, National assessment of shoreline change: Historical shoreline change in the Hawaiian Islands: U.S. Geological Survey Open-File Report 2011–1051, 55 p. (Also available at <https://pubs.usgs.gov/of/2011/1051/>.)

² Hawai'i Climate Change Mitigation and Adaptation Commission. Hawai'i Sea Level Rise Vulnerability and Adaptation Report. Prepared by Tetra Tech, Inc. and the State of Hawai'i Department of Land and Natural Resources, Office of Conservation and Coastal Lands, under the State of Hawai'i Department of Land and Natural (2017).

³ <https://www.hawaiinewsnow.com/2022/02/28/no-injuries-after-house-collapses-oahus-north-shore/>



Dr. Charles “Chip” Fletcher

Director, Climate Resilience Collaborative

Interim Dean, School of Ocean and Earth Science and Technology

University of Hawai‘i at Mānoa

fletcher@soest.hawaii.edu

Thursday, February 9, 2023

Aloha, Chair Kia‘āina, Vice-Chair Cordero, and Members of the Committee,

I am writing to support Bill 42 (2022), CD1. I write as Interim Dean of the School of Ocean and Earth Science and Technology at the University of Hawai‘i at Mānoa and as the Director of the Climate Resilience Collaborative (CRC).

CRC is a multi-investigator research project at the University of Hawai‘i at Mānoa focused on sea level rise adaptation and climate resilience. CRC is updating coastal models that project the impacts of sea level rise.

I support Bill 42 because rising sea levels will inundate O‘ahu’s coastal areas and this bill will increase the resilience of our coastal communities by conforming to Act 16 (2020) and minimizing development in the sea level rise exposure area.

Thank you, I am available for questions.

Respectfully,

C. Fletcher

Charles Fletcher

STARN • O'TOOLE • MARCUS & FISHER

A LAW CORPORATION

February 8, 2023

VIA INTERNET UPLOAD

Committee on Planning and the Economy
City Council
City and County of Honolulu
530 S King St.
Honolulu Hale, Room 202
Honolulu, Hawai'i 96813

**RE: Testimony for the February 9, 2023, 9:00 a.m.
Hearing of the Committee on Planning and the Economy
Bill 42 (2022), CD1, Proposed CD2 – Relating to the Special
Management Area**

Aloha Chair Kia'aina and Members of the
Committee on Planning and the Economy:

I submit this testimony as a follow-on to the testimony I previously submitted on Bill 42 on September 21, 2022.

I'm generally supportive of Bill 42's proposed revisions that bring Chapter 25, Revised Ordinances of Honolulu into conformity with Hawaii Revised Statutes Chapter 205A, although I remain gravely concerned about certain provisions. Those provisions include section 25-4.1(b)(6), which seems inconsistent with Chapter 205A, does not account for the variety of tools we have at our disposal, and does not balance the interests of various stakeholders. In its current form, Bill 42 would implement a policy of managed retreat, particularly within the sea level rise exposure area. As discussed in my previous testimony, adopting a policy of managed retreat is premature at this time. I offer the following comments on Bill 42.

Subdivision 2 of section 25-1.3's definition of "development" should not combine paragraphs (B) and (N) as the resulting paragraph is confusing. As worded in the Proposed CD2, nonstructural improvements include both structural and nonstructural improvements for dwelling units. Under HRS chapter 205A, a distinction is made between commercial and noncommercial structures, with nonstructural improvements for both being excluded from "development" and structural improvements to only noncommercial structures being excluded.

The revision to section 25-4.1(b)(6) offers no substantive change from CD1. Under CD1, the agency or council is required to minimize development that would result in habitable structures being sited within the sea level rise exposure area ("**SLR-XA**"). That is still the result under the Proposed CD2, with the added explanation of why, *i.e.*, to minimize "[r]isk to development from sea level rise and other coastal hazards[.]" This guideline goes too far and I propose the following amendment:

Pacific Guardian Center, Makai Tower • 733 Bishop Street, Suite 1900 • Honolulu, Hawaii 96813
Telephone: (808) 537-6100 • Fax: (808) 537-5434 • Web: www.starnlaw.com

[(3)](b) The agency or council shall seek to minimize, [~~where~~] whenever reasonable:

....

(6) Risk to development from sea level rise and other coastal hazards, which may be accomplished by, without limitation, siting habitable structures outside of the sea level rise exposure area, or adapting habitable structures within the sea level rise exposure area to accommodate sea level rise.

Mahalo nui loa for considering our request.

Mahalo nui,

A handwritten signature in black ink, appearing to read "Ivan M. Lui-Kwan". The signature is fluid and cursive, with a large initial "I" and a stylized "K" at the end.

Ivan M. Lui-Kwan

February 9, 2023

The Honorable Esther Kia'āina, Chair
The Honorable Radiant Cordeiro, Vice-Chair
and Members of the Committee on Planning
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Subject: Bill 41 (2022), CD1 and Bill 42 (2022), CD1

Dear Chair Kia'āina, Vice-Chair Cordeiro, and Committee Members,

I am Robert Armstrong, and I own a small parcel on Kaneohe Bay. While I support reasonable and responsible efforts to manage and protect Oahu's shoreline, **I strongly oppose both Bills 41 and Bill 42 (2022), CD1, unless certain key changes are made to them and to the SMA process.**

Bills 41 and 42, as currently drafted, would have unintended consequences that would unfairly and unnecessarily deprive individual owners of the use and value of their properties and would be unfair and devastating for many small landowners like me.

Bill 41 (2022), CD1

There are some shoreline properties facing imminent and grave danger from both storm surf and sea level rise.

However, many shoreline properties like mine do not face any imminent danger and have many decades of use and value remaining even in the face of the projected sea level rise. Bill 41, as written, would destroy the value of many such properties.

Given the many different situations around the island, what is clear is that an arbitrary "one size fits all" increase in shoreline setback, irrespective of lot size, location, topography, exposure, and shoreline conditions, is not fair, reasonable, or necessary. Such a drastic restriction is unnecessary in many cases, where there many ways to plan and develop and build responsibly, taking into account and creatively designing for the projected rise in sea level in the coming decades.

My lot is on a sheltered side of Kaneohe Bay and is protected from high surf and from most storm conditions. I have a permitted grading plan and have been working on the placement and design of a home taking into account the projected rise in sea level.

The proposed increased setback, however, would prevent my house design from being permitted and constructed, and my lot (currently assessed at \$1,500,000) would be rendered virtually unusable and worthless. Please see the attached drawing, which shows what Bill 41 would do to my property.

Existing oceanfront and shoreline properties have been assessed and taxed by the City and County of Honolulu at the highest possible values, and this sudden, arbitrary, and overbroad restriction on use of such properties would have a devastating effect on the values of such properties and be tantamount to a "taking."

The Department's "simple" answer of getting a variance if needed is not realistic. As shown in the attached drawing, for lots like mine on Kaneohe Bay (and around the island), doing almost any construction or renovation will involve work within the proposed 60-foot setback. **How can the City Council or any City and County body deal in a timely manner with the hundreds, if not thousands, of variance applications and hearings that will be triggered by this "one size fits all" approach to shoreline setbacks?**

The immediate focus should be on addressing the micro-environments that face imminent danger and need immediate action. Immediate, creative, and coordinated efforts are needed to address the problems faced by such threatened properties. Then more time and study is needed on appropriate setbacks for different micro-environments around the island, taking into account creative ways of maximizing the useful life and value of existing shoreline properties.

Bill 42 (2022), CD1

The threat of Bill 42 has created a panic on the part of shoreline property owners, who are scrambling to find a way to deal the proposed imposition of SMA requirements on all shoreline properties. I have been quoted \$125,000 - \$175,000 to prepare and submit the SMA application for just a normal single-family home. **Given the exorbitant expense and an overwhelmed City and County system,** many shoreline and oceanfront property owners will never have a chance to complete the process before their property values are unfairly and unnecessarily destroyed.

Pushing back the proposed implementation date from January 1, 2024 to July 1, 2024 will do nothing to solve this problem.

The real problem is that the \$500,000 cutoff for minor SMA permits has never been changed, while construction costs have increased by 4 to 5 times. The cutoff for minor SMA permits should be increased to \$2,000,000.

When the \$500,000 cutoff was enacted in about 1987, normal single-family homes could be built for less than \$500,000, and it was truly a large construction project or development that would trigger a requirement for a major SMA permit (together with all its environmental, public notice, and public hearing requirements). **Construction costs are now 4 to 5 times higher than they were in 1987. As a result, almost any construction on a shoreline parcel will require a major SMA permit. How many small property owners can afford that? How is the City and County going to handle all these SMA permits and hearings?**

For these reasons, I strongly oppose both Bills 41 and 42, as presently written.

Thank you for your consideration and for the opportunity to testify on this matter.

Sincerely,

Robert Armstrong

February 9, 2023

Calvert G. Chipchase
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813-4212
Direct Line: (808) 521-9220
Direct Fax: (808) 540-5021
Email: cchipchase@ca-des.com

Councilmember Ester Kia`aina, Chair
Councilmember Radiant Cordero, Vice Chair
Planning and the Economy Committee, Honolulu City Council

Re: Comments on Bill 41 (2022) – Shoreline Setbacks; Bill 42 (2022) –
Special Management Area (“SMA”)

Aloha Chair Kia`aina, Vice Chair Cordero, and members of the Planning and the Economy Committee,

Thank you for considering comments on Bills 41 and 42. Changes that have already been incorporated in CD2, such as continuing to allow concurrent processing of environmental documents and SMA permits, will help facilitate the SMA permit process. I appreciate your concern for those issues.

I offer the following comments on the Proposed CD2 for your consideration.

I. Bill 41 (2022) – Shoreline Setbacks

1. Proposed ROH Section 26-1.6 Repairs to Nonconforming Structures

Bill 41 amends ROH Section 26-1.6 to limit repairs to nonconforming structures to a cumulative value of fifty or seventy-five percent of the replacement cost of the structure over a ten-year period, depending on the structure's distance from the certified shoreline. 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 and implementing certain 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.

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

II. Bill 42 (2022) – Special Management Area

1. Proposed ROH Section 25-1.3 “Development”

Bill 42 limits additions of minor accessory structures and floor area to 300 square feet for shoreline lots and certain other dwelling units. This is significantly more restrictive than the limitations in Hawaii Revised Statutes (“HRS”) chapter 205A.

Proposed subsection (2)(B) should be modified to restore the exemption for structural and nonstructural improvements to existing dwellings units, including minor accessory structures and floor area additions, without regard to the size of the addition or the type of dwelling unit.

2. Proposed ROH Section 25-1.3 “Significant Effect”

“Significant effect” is defined as including the “sum of effects,” which closely resembles “cumulative impact.” The definition should be revised to pertain only to singular effects that substantially affect the quality of the environment.

3. Proposed ROH Section 25-1.3 “Structure”

The definition of “structure” should be restored to conform with HRS § 205A-22. The expansion of the definition to include any object that could be fixed in place would expand the number of projects requiring an SMA permit. This change would add to the strain on DPP and divert attention from the significant projects that truly require the focus of DPP staff. Restoring the definition of “structure” also conforms to city and state CZM regulations.

4. Proposed ROH Section 25-3.1 Objectives, policies, and guidelines

Proposed section 25-3.1(j) precludes development in the SMA that will have a cumulative impact or significant effect unless minimized to the extent practicable and clearly outweighed by a public interest. This is at odds with the use of the terms “cumulative impact” and “significant effect” elsewhere in the SMA Ordinance. Under the definition of “development,” “cumulative impact” and “significant effect” are used to determine whether a use may constitute “development” even though it is not enumerated. The inclusion of subsection (j) would mean that a use not expressly included within the definition of “development” would not only require an SMA permit but would be entirely prohibited within the SMA unless minimized and

outweighed by a public interest. This subsection should be removed to avoid confusion as to the treatment of development creating a “cumulative impact” or “significant effect.”

5. Proposed ROH Section 25-6.1 Conditions for all development

Bill 42 would prohibit planting, watering or maintaining landscaping, such as naupaka, on a shoreline lot so that the landscaping acts as a shoreline hardening barrier, “particularly if [the landscaping] alter[s] or interfere[s] with the natural beach processes.”

This standard is vague and, as drafted, would require a showing that a shoreline lot owner was maintaining the landscaping with the intent that it be used as a shoreline hardening barrier. Other reasons for maintaining the landscaping would conceivably be allowed under Bill 42. Moreover, this prohibition will only serve to accelerate coastal erosion.

The current requirement that landscaping be confined to the shoreline lot and not extend seaward of the shoreline or onto beach access is a clear and enforceable standard that does not need to be expanded.

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,

A handwritten signature in black ink, appearing to read "Calvert G. Chipchase".

Calvert G. Chipchase

for

CADES SCHUTTE

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