



**KAUAI**

*Chamber  
of  
Commerce*

October 21, 2014

Kauai County Council  
Attention: Honorable Council Chair Jay Furfaro  
And, Members of the Kauai County Council  
4396 Rice Street  
Lihue, Hawaii 96744

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OFFICE OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

RE: Bill 2461

Dear Chair Furfaro and members of the Kauai County Council:

The Kauai Chamber of Commerce is in support of Bill 2461 as intended but, is concerned with the proposed amendments.

The Shoreline Setback Ordinance should only apply to lots abutting the shoreline (and, not to non-abutting lots).

Only structures or prohibited activities proposed within 500 feet of the shoreline on these abutting properties should be required to apply for a shoreline setback determination. Structures or prohibited activities proposed beyond 500 feet of the shoreline should be exempt from the application process.

There should be an exemption from the shoreline setback determination process for structures and subdivisions that are not subject to coastal hazards where such lots are: located 30 feet above mean sea level; not located in a flood or tsunami zone; and, are located on a rocky (non-eroding) shoreline.

The arbitrary shoreline setbacks contained in Ordinance 887 should be replaced by a formula that is based on the coastal erosion rate for each lot located on shorelines which are subject to erosion, but not for lots located on non-eroding shorelines.

Other than the restriction on certain prohibited activities (such as the removal of sand and coral from shoreline areas), the Shoreline Setback Ordinance should not be used to regulate general activities and uses in the shoreline area. General activities and uses should be regulated by the Special Management Area ("SMA") Permit process.

The Shoreline Setback Ordinance should only be used for its intended purpose, which is to protect life, property and coastal resources from coastal hazards. It should not be misused for the purpose of creating buffers along the shoreline to establish recreational, access, view plane and aesthetic setbacks. Matters relating to view planes should instead be addressed by the SMA Permit process or by the application of the provisions in the Comprehensive Zoning Ordinance relating to the establishment of scenic corridors.

Aloha.

Randall Francisco  
Kauai Chamber of Commerce

revd on mtg  
10/22

# Hui Ho'omalulu i ka 'Āina

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Post Office Box 1045 • Hanalei • Hawaii • 96714

October 22, 2014

Kauai County Council  
4396 Rice Street  
Lihue, Hawaii

Testimony re: Bill # 2461- Shoreline Setback Bill

Aloha Council Chair and Members, I am Maka'ala Ka'aumoana, vice chair of Hui Ho'omalulu i ka 'Āina. We are a taro root organization founded in the early 1980's by traditional practitioners of moku Halele'a to address threats and impacts to the natural and cultural resources of Kaua'i. Founded by farmers and fishermen, weavers and hunters, we seek to provide context for issues related to the ecology of our ahupua'a. The organization is an active advocate for those native things and ways that are disappearing. We are not a nonprofit, we are an activist organization. We do not whine and wait, we act.

Hui Ho'omalulu i ka 'Āina is the plaintiff in the Federal Endangered Species Act proceedings against the County of Kauai for the take of the Newell's Shearwater and the Hawaiian Petrel. We testify today on Bill #2461 which for the most part seeks to protect those native things and ways for which we advocate. We appreciate the time and energy committed by the County and volunteer members of the working group who addressed this issue and developed this legislation. We understand that when we attempt to manage human uses of our resources, things get complex quickly. The work put into this bill was certainly that, complex. And, with one glaring exception in our opinion, reflects thoughtful and comprehensive consideration of those things we care about.

The exception of which we speak is the focus of this testimony. The exemption in this bill relating to rocky coastlines and bluffs, interestingly called "bright line" exemptions are certainly glaring omissions to us. To not provide protection for those places we all know as part of the special quality of Kauai is not doing our job. This is not a simple, "we can fix it later", this is a missing piece of the puzzle, a prominent component cut out. The Special Management Area rules, with which we are very familiar, do not address the concerns we share today. The CZO mentions it only once and this is the section you are considering here today. This cannot be delayed for another day, another

# Hui Ho'omalū i ka 'Āina

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stab at the issue, without conceding the real impacts to Hanalei River and Bay view planes that will occur while you "fiddle".

Look at Wanini and Princeville now, when in the water, you can't see the mountains, when on the land you can't see the coastline. Why, because structures are built right to the edge, on pu'u that jut out and block the view. If the SMA applied, don't you think we would have used it to protect those places?

To us, this exemption is a transparent "gift" to the developers, some of whom are waiting for it to proceed with their projects. The very makeup of the working group was set to favor their interests and indeed, it appears they have achieved that goal.

As a culturally based organization we are committed to looking at the whole, the ahupua'a perspective, the pono process and not just the human factor in the picture. We are responsible to give voice to those practices and places that cannot speak for themselves. Many of these pu'u provide vital cultural information. Kilo i'a as an example. Views to some are information to others. Lawns to some, habitat to others.

This bright line exemption may be appropriate for somewhere else but not here where our rocky shorelines and bluffs are critical gathering and spiritual places.

This bill is not ready, it is not pau. It is incomplete until it addresses the whole picture. It is your kuleana by law and by practice, to produce the best legislation you can and not segment your work, not to say we'll fix that later. If this exemption is not removed from this bill, when all we can see are lights and our reflections in the glass along the bluffs, that which we seek to protect will be gone. Not to be retrieved.

Do not pass Bill #2461 with this bright line exemption; it is a bad exemption in an otherwise good bill. Fix it by removing the exemption or kill it and start anew.

Me ka pono,



Maka'ala Ka'aumoana  
Vice Chair

October 22, 2014

Re: Bill 2461, Shoreline Setback Exemption

Aloha Chair Furfaro, Vice-Chair Chock and Councilmembers,

Mahalo for your hard work on Bill 2461. There are many positive aspects to this bill, all of which is because of your diligent collective focus.

**I am here to ask you to remove the proposed exemption for the current shoreline setback. I submit to you the following thoughts and questions:**

- How do Kaua`i residents benefit from a setback exemption? Since the majority of us cannot purchase a luxury home on a Kaua`i bluff, please help us understand why the Council is considering the exemption
- The current 100-foot setback already allows for some of the most magnificent views in the world
- One of the most popular features of Kaua`i is our low profile for development. If luxury homes are allowed to be 40 feet from the shoreline and visible all along our coastal bluffs, we will be looking at those homes for a very long time
- Several species of native seabirds rely entirely on those bluffs for nesting. The Laysan albatross faces countless global threats already. Sea level rise will drown many of the NW Hawaiian Islands, making Kaua`i bluffs their Noah's Ark. They are among the birds that assisted Polynesian voyagers to find these islands. They ask for so little in return. How can we deny them protection? The setback exemption ignores their safety and need for habitat.
- Changing our laws for developers sets an unfortunate precedent. By doing so, we teach them—and those who follow— that they are more valuable than our laws, our residents and our native species.
- Kauai is in a position to be different than the rest of the world, and this is an opportunity to make a courageous choice. We have faith in you.

Me ke aloha,



Hob Osterlund, RN, MS  
Founder, Kaua`i Albatross Network

rowd 10/22/11  
Bill 2461, 102



## KILAUEA NEIGHBORHOOD ASSOCIATION

**President:**  
Yoshito L'Hote

County of Kaua'i  
Office of the County Clerk  
Council Services Division  
4396 Rice Street, Suite 209  
Lihu'e, HI 96766

**Vice President:**  
Alvin Castelo

**Secretary:**  
Thomas Pickett

Dear honorable Kauai County Council members,

**Treasurer:**  
Gary Pacheco

It is the position of the Kilauea Neighborhood Association that we are better leaving things as they are in the Coastal Zone Ordinances in regards to coastal setbacks than adopting Bill 2461 as is.

**Sergeant-at-arms**  
Scott Mijares

By reducing the shoreline setback on large rocky bluff properties by 60%, it will affect not only seabird habitat but the beauty of Kauai's coastal area. It is only in the CZO Article 27 that view-planes and the beauty of Kauai's coastal area are protected (nothing in the SMA currently protects those), which is exactly what the article in Bill 2461 intends to impact by eliminating the 100 foot setback requirement for large lots on rocky bluffs. If the intention of introducing this bill is to only address erosion control, and not address the view-plane, we'll be simply repeating the same mistakes made with the TVR's and waiting for studies to be done until a new ordinance is passed.

**PTSA Rep.**  
Tricia Padilla

**Directors:**  
Mike Latif  
Beryl Blaich  
Bill Troutman  
Tim Kallai  
Ken Carlson  
Charlie Martin  
Carrie Souza  
Ron Paul  
Tamra Martin

However, the KNA feels that the hard work put into this bill can be salvaged if you eliminate the rocky bluff exemption from this bill. If this exemption is eliminated, the bill is sound and should be passed. We put our trust in this Council to make the right decision and vote on an amended Bill 2461. If it is not amended, then kill this bill for the sake of one of Kauai's best assets, it's beauty.

Mahalo nui loa,

Yoshi L'Hote  
President



LAND USE RESEARCH  
FOUNDATION OF HAWAII

1100 Alakea Street, Suite 408  
Honolulu, Hawaii 96813  
(808) 521-4717  
[www.lurf.org](http://www.lurf.org)

**Via E-mail**

October 22, 2014, 2014

The Honorable Jay Furfaro, Chair  
And Members of the Council of the County of Kauai  
4396 Rice Street  
Historic County Building  
Lihue, Hawaii 96766

**Comments to and Support of Bill No. 2461, Draft 1 and Floor Amendment #1  
- "A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY  
CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE  
ZONING ORDINANCE" (Amendments to the Shoreline Setback Ordinance)**

**Hearing, Wednesday, October 22, 2014, 8:45 a.m., Council Chambers, Suite  
201**

Dear Chair Furfaro and Members of the Kauai County Council,

The Land Use Research Foundation of Hawaii ("LURF") is a statewide 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 Hawai'i's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to express its **general SUPPORT for Bill 2461, Draft 2 (Dated October 22, 2014)**, relating to Kauai's Shoreline Setback ordinance amendment ("Bill 2461").

LURF's positions are based on based on the detailed legal and scientific research, review and discussions of the Kauai Council's Working Group (including Qualified consultants from Hawaii Sea Grant and LURF's coastal geologist consultant, Chris Conger); the evaluation of erosion or coastal hazard exposure and risk by the legal and Qualified consultants in the Working Group; and based on consultation and evaluation by Qualified Consultant Chris Conger, who is a coastal scientist with a master's of science degree in Hawaiian coastal processes and geology; with over six years of specialized work experience in coastal processes, coastal hazards, and coastal hazard

mitigation with Hawaii Sea Grant and assisting the State of Hawaii and counties with issues related to coastal processes and coastal hazard mitigation.

While LURF can accept the current version of Bill 2461, it will be submitting additional comments, objections and recommendations relating to certain provisions of Bill 2461 and to the floor amendments, which may be proposed by various Council members, summarized as follows:

- **CM#1 (Deletion of Rocky Shoreline/Bright-Line Exemption).** **OPPOSE:** This proposal is not supported by any written justification; is not based on any scientific and engineering evaluation of erosion or coastal hazard exposure and risk; disregards the detailed scientific research, review and discussions of the Working Group; and ignores the advice and input from Qualified Consultants, who are coastal scientist with a master's of science degree in coastal geology relating to coastal processes, coastal hazards, and coastal hazard mitigation in Hawaii.
- **CM#2 (Deletion of setback calculations for lots which were not included in the Kauai Coastal Erosion Study).** This proposal is not supported by any written justification; is not based on any scientific and engineering evaluation of erosion or coastal hazard exposure and risk; disregards the purpose, intent and results of the Kauai Coastal Erosion Study; and ignores the advice and input from Qualified Consultants.
- **JY#1 (Amended) (Bright-Line exemption requires certified shoreline and 60-foot setback).** LURF **supports** the portion of this amendment that confirms the certified shoreline requirement of a certified shoreline for properties otherwise exempt for the requirements of the ordinance. However, LURF **OPPOSES** the proposed sixty (60) foot setback for structures or subdivisions on "Rocky Shorelines" and located at an elevation of thirty (30) feet above mean sea level or greater, because it is not supported by any written justification; is not based on any scientific and engineering evaluation of erosion or coastal hazard exposure and risk; disregards the purpose, intent and results of the Kauai Coastal Erosion Study; and is inconsistent with the intent and scientific basis for the provisions of Bill 2461, Draft 2, Section 27.3(d) relating to "Lots Not Included in in the Kauai Coastal Erosion Study," which specifies that setbacks for naturally occurring Rocky Shorelines (at sea level) shall be no less than forty (40) feet.
- **Possible "view plane" or "aesthetics" requirements.** LURF must respectfully **OPPOSE** any such amendments, because issues such as view planes and aesthetics are more properly address thought the "Shoreline Management" law, rules and applications, instead of the "Shoreline setback" law, which addresses coastal erosion and hazards.

**Kauai Council Working Group for Bill 2461.** LURF also appreciates the opportunity to have participated as a member of the Working Group for Bill 2461. Over the past year, we worked collaboratively with three the Kauai Council Members, representatives from the Offices of Council Services, Department of Planning, Department of the Corporation Counsel and various stakeholders, including, but not limited to: Qualified Consultants, including Hawaii Sea Grant and Chris Conger, representatives of shoreline landowners, two former Kauai Planning Directors, land use

legal experts with over 77 years of combined law practice and experience, and other members of the public. The provisions of the proposed Bill 2461 were repeatedly reviewed, discussed, revised by the Working Group over several months. While there was no 100% consensus, Hawaii Sea Grant, Mr. Conger, the Kauai County Planning Department, Kauai Department of the Corporation Counsel, the land use experts and LURF generally accepted the proposed Bill 2461.

We understand that the opponents to Bill 2461 will attempt to argue that this bill reduces shoreline protections; is inconsistent with Hawaii Revised Statutes (“HRS”) Chapter 205A; and should include provisions relating to the regulation of “activities,” “view planes,” and “landscaping.”

LURF, however, disagrees with the opponents, and **generally SUPPORTS Bill 2461**, based on the following:

- **Working Group review process, review and input.** Council member Yukimura spearheaded the above-described Working Group, which researched, reviewed, discussed and made recommendations regarding Bill 2461. AS described above, during the several months of the Working Group process, Bill 2461 has been extensively reviewed, discussed, revised and most of the Working Group is “satisfied” and “accepts” Bill 2461, Draft 2 (Hawaii Sea Grant and Mr. Conger serve as scientific resources and do not engage in advocacy support roles). A couple of members of the public also participated in the Working Group; however, they may not be supporting the passage of the Draft 2 version of Bill 2461.
- **Bill 2461 actually increases shoreline setback protections**, based on scientific information, enforcement issues and Kauai County policies (see “purposes” of Bill 2461, below).
- **Bill 2461 still requires compliance with HRS Chapter 205A, and State and county laws relating to SMA law and the Kauai County SMA rules.** These requirements are confirmed in multiple provisions of the bill.
- **State shoreline certifications are required for all Kauai properties, which qualify for the “Bright-Line” exemption in Section 8-27.3.**
- **A forty (40) foot shoreline setback is required for all Kauai properties, which qualify for the Bright-Line exemption**, which is consistent with spirit, intent and application of Section 8-27.3(d) Lots Not Included in the Kauai Coastal Erosion Study.
- **The Kauai’s Shoreline Setback law regulates “*structures and improvements*” within the Shoreline Setback area, to protect life and property.**

- **The existing Shoreline Management Area (SMA) law and Kauai’s SMA rules already regulate and enforce shoreline “use” issues such as “commercial uses and activities,” “landscaping” and “view planes” on the shoreline areas.**

**Background.** Bill 2461, Draft 2 explains the background of Kauai’s Shoreline Setback law: On January 25, 2008, the first shoreline setback ordinance (Ordinance No. 863) was signed into law. The original purpose of the ordinance was “to properly site structures to protect life, property, and resources along Kauai’s shorelines from a wide variety of natural hazards, including high surf, hurricanes, flooding, and erosion.” The Council envisioned Ordinance No. 863 as an initial effort to establish shoreline setbacks while science-based coastal erosion hazards maps were being completed

On December 2, 2009, Ordinance No. 887 became effective, amending the original shoreline setback ordinance. The purpose of Ordinance No. 887 was to streamline permit procedures by removing unnecessary requirements for structures and activities permitted within the shoreline setback area.

In 2010, the University of Hawai’i Coastal Geology Group completed the Kauai’s Coastal Erosion Study that mapped historical shoreline positions to calculate shoreline change data along most of Kauai’s sandy shorelines, thus making available documented rates of shoreline erosion.

This update of Kauai’s Shoreline Setback Ordinance was necessitated by, among other things, new scientific information and input; new state laws relating to the shoreline (prohibiting intentional land-owner induced propagation of vegetation along the shoreline to block shoreline access); as well as information from the Department of Planning and residents relating to practical enforcement realities for properties that are not affected by, nor affect coastal hazards or erosion.

**Bill 2461.** Contrary to the arguments of some Council members and opponents to this bill, this bill actually **STRENGTHENS** shoreline protections, based on the new scientific information, discussion and revision by shoreline experts and input by the Kauai Department of Planning. The purposes of this bill include, but are not limited to the following:

(1) **To protect life and to ensure the longevity and integrity of Kauai’s coastal and beach resources along Kauai’s shoreline.**

(2) **To strengthen shoreline setback protections and requirements**, by incorporating science-based erosion rates established in the Kauai Coastal Erosion Study and current coastal hazard mitigation best practices and strategies.

**(3) To strengthen shoreline and related flooding protections and improve coordination between the Departments of Planning and Public Works, by aligning the Shoreline Setback Ordinance with the County Flood Ordinance.**

**(4) To strengthen protections against episodic shoreline erosion** that is not accounted for in the Kauai Coastal Erosion Study until studies providing additional guidance and information are completed.

**(5) To strengthen the protections under HRS Chapter 205A,** by creating consistency with recent amendments to HRS, Chapter 205A, as prescribed in Act 120 of the 2013 State Legislature.

**(6) To strengthen and broaden powers of the Kauai Planning Director to enforce and interpret the shoreline setback law.** These provisions allow the Planning Director and the Planning Department staff to enforce “shoreline setback requirements” for existing and proposed structures or improvements abutting the shoreline, or five hundred fifty (550) feet from the estimated certified shoreline; provide exceptions for structures or improvements in locations that will not increase erosion or affect natural shoreline processes.

**(7) To clarify and confirm the jurisdiction, protections, requirements of the Shoreline Setback law and rules, while preserving the jurisdiction, protections and requirements under HRS, Chapter 205A and the SMA laws, and rules.** This bill also repeatedly confirms that “activities” and “uses” (which would include commercial and recreational uses and landscaping) are enforced under the SMA provisions of HRS, Chapter 205A and the Kauai County SMA rules and regulations.

**(8) To require specific scientific standards and/or measurable criteria as conditions to grant exceptions or variances to the shoreline Setback law.** These specific scientific requirements and/or measurable criteria have been reviewed, discussed, revised and accepted by Sea Grant, shoreline scientist and expert Chris Conger, the Kauai County Planning Department, Kauai Department of the Corporation Counsel, land use planning and legal experts.

**Additional LURF comments, objections and recommendations.** During the Working Group process, LURF expressed its comments, objections and recommendations relating to certain provisions of Bill 2461. While LURF generally supports and can accept the current version of Bill 2461, it is submitting the following comments, objections and recommendations, which still apply Bill 2461:

- **Opposition to existing provision: Section 8-27.2(a) Applicability to all lands that are abutting the shoreline, where structures and/or**

**prohibited activities are proposed within five hundred (500) feet of the shoreline.** LURF is **opposed** to the existing law, which is arbitrary and excessive, because it generally applies Kauai's Shoreline Setback ordinance to *all lands abutting the shoreline within five hundred (500) feet of the shoreline*. Some county jurisdictions in Hawaii require only a forty (40) feet shoreline setback. This bill does not provide a reasonable explanation or justification for a setback that is over 10 times greater than the other counties. LURF respectfully recommends that this section be revised to apply only to abutting lands within forty 40 feet of the shoreline, or revised to reflect some other reasonable distance.

- **Opposition to proposed amendment: Section 8-27.2(b) and 8-27.3(e) Application to all lands that are NOT-abutting the shoreline, where structures and/or prohibited activities are proposed within approximately five hundred-fifty (550) feet of the shoreline.** LURF is opposed to this provision because (1) the shoreline setback law should **NOT** broadly apply to all lands which are *NOT abutting* the shoreline. There is arguably **no coastal hazard or erosion danger** to such parcels, which are "*non-abutting*" and which may be two or three lots "inland" and approximately five hundred-fifty (550) feet away from the shoreline; and (3) the shoreline setback law in most county jurisdictions only applies to lands actually *abutting* the shoreline; (3) the approximately five hundred-fifty (550) feet setback is arbitrary and excessive; and (4) this bill does not provide a reasonable explanation or justification for a shoreline setback applicable to "*non-abutting*" lands, which is over 10 times greater than the other counties in the State.
- **Support for proposed definition of "Prohibited Activities."** The current law could be interpreted to require an expensive shoreline certification report for landscaping and any other "activity" on any lot that is within five hundred feet of the shoreline, including "*back-yard*" *family and friends' events, such as picnics, dinners, kanikapila, volleyball games, weddings*, as well as commercial uses. One Working Group member erroneously wanted to use this bill (which is supposed to regulate shoreline "*structures and improvements*" that are subject to coastal hazards and erosion) to prohibit or regulate "aesthetics" (view planes) and various kinds of next-door "activities" and commercial uses – which are already properly regulated under the SMA law and rules and regulations. LURF **supports** this amendment to Section 8-27.2, which removes ambiguity by tying the definition of "Prohibited Activities," to those prohibited in the shoreline setback area as provided in Section 8-27.6; and because it specifically states that, "all other activities" shall be regulated by Kauai's SMA rules and regulations. This new provision confirms that "*all other activities along the shoreline*" are already regulated by SMA rules and regulations. This amendment was added to address the repeated misinformed allegations that Bill 2461 would exempt all SMA laws, and there would no laws to regulate commercial activities along the shoreline. This new amendment confirms that the existing and future laws relating to "*activities*" and "*view planes*" and "*landscaping*" will still be enforced under the SMA law and rules and regulations – not under the shoreline setback law.

- **Support for “Bright-Line” exception based on scientific criteria and Planning Director’s determination.** LURF **supports** this science-based amendment to Section 8-27.3, which would allow an exception to the shoreline setback certification requirement for proposed structures or subdivisions, only upon the satisfaction of all three specific scientific criteria that relate to coastal hazards and erosion: (A) In cases where the proposed structure or subdivision is located outside of the Federal Emergency Management Agency (“FEMA”) Flood Insurance Rate Map (“FIRM”) V or VE flood zones; and (B) The proposed structure or subdivision is located at an elevation which is thirty (30) feet above mean sea level or greater; and (C) The applicant can demonstrate to the satisfaction of the Planning Director that the property is clearly adjacent to a rocky shoreline such that it will not affect or be affected by coastal erosion or hazards. This provision is referred to as “Bright-Line,” because its requirements are very clear, objective, and based on the science related to coastal hazards and erosion. This “Bright-Line” provision has been repeatedly reviewed, discussed and revised by the Working Group; and has been accepted by Sea Grant, shoreline scientist and expert Chris Conger, the Kauai County Planning Department and Kauai Department of the Corporation Counsel, land use planning experts and attorneys.
- **Objection to “lot depth” restrictions on shoreline setback distances for location of homes based on “lot depth” and whether the homeowner has a wide, shallow lot vs. a narrow deep lot.** The current law and proposed amendments in Bill 2461, Section 8-27.3 (c) propose different shoreline setback requirements based on the depth of the parcels. This requirement is unfair and could lead to neighbors with the exact same lot area being forced to build their homes in different locations, just because of the shape of their residential lots. This means that a neighbor who has a wide but shallow lot could build closer to the *makai* shoreline, while their neighbor, who may have a long, narrow lot, could be forced to build their home farther *mauka*. This requirement is unfair and illogical – if Neighbor A has a shallow lot, can build their home fifty (50) feet from the shoreline, why should Neighbor B, who has a long narrow lot with the exact same square feet, be penalized, and forced to build their home farther from the shoreline than their Neighbor A? These provisions should be **deleted**, and a standard, consistent, shoreline setback should be established for all who are the same distance from the shoreline, with the same coastal conditions (depending on sandy or rocky shorelines).
- **Objection to arbitrary restrictions based on “building footprint.”** Bill 2461 includes many references and restrictions based on the concept and application of a “building footprint.” While LURF understands and generally supports the change of the “minimum buildable footprint” from two thousand one hundred (2,100) square feet to one thousand five hundred (1,500) square feet, which would allow the option of building smaller homes, LURF opposes the portions of the Bill that unreasonably restrict the size of homes and other structures on private property. While we can understand such restrictions for

“non-conforming” structures, these “building footprint” restrictions are not justified in the Bill, and could be interpreted to express a prejudice against luxury homes, or against the construction industry rebuilding better homes on shoreline private properties. If in compliance with the required shoreline setback for the property, LURF does not know of any scientific nexus between the “building footprint” of a home and coastal erosion and coastal hazards. In addition, to our knowledge, such “building footprint” restrictions do not apply to other homes legally built elsewhere on Kauai. Based on the lack of scientific justification and the arbitrariness, these “building footprint” restrictions should be deleted from the Bill.

- **Support for amendment regarding “Applicable Laws,” which again confirms that the provisions of the Shoreline Setback law shall not abrogate the requirements of HRS Chapter 205A, the SMA Rules and Regulations, or any other applicable statutes, codes, ordinances, rules and regulations, or other laws.** A new Section 8-27.5 was added to address the repeated unreasonable accusations that Bill 2461 would exempt all state and county shoreline-related laws. This is the second confirmation in Bill 2461, which assures compliance with HRS Chapter 205A, the SMA rules and regulations, or any other applicable statutes, codes, ordinances, rules and regulations, or other laws. This provision assures, for a second time that the existing and future SMA laws relating to “activities” and “view planes” and “landscaping” will still be enforced.
- **Recommend review and revision of references to “landscaping” and “activities.”** Portions of Section 8-27.7, on pages 7 and 9 of the Floor Amendment still include references to “landscaping” and “activities,” some of which were supposed to be deleted in Bill 2461.
- **Recommend review and revision of “permitted structures” in shoreline setback *built ‘by’ a governmental agency*” to address an emergency.** Government agencies usually do not have their own construction company, and must contract out to private construction firms to build structures. Thus, it may be impossible for a structure to be built “by” a governmental agency. In addition, during an emergency, government agencies might approve and hire private contractors to build structures, or government agencies might approve structures built by private landowners, who can do it faster. LURF respectfully recommends that this provision could be clarified to replace the words “built by” with the words “approved by.”
- **Support for existing provision Section 8-27.7(b) (5), which confirms for the third time, that that all new structures “shall be consistent with the purposes of this article and HRS Chapter 205A.”** This is the third provision in Bill 2461 that addresses the repeated misguided allegations that this bill would exempt all state and county shoreline-related laws. This is yet another confirmation that Bill 2461 requires compliance with HRS Section 205A,

which includes the SMA law and Kauai County SMA rules and regulations relating to “activities,” “view planes” and “landscaping.”

- **Opposition to any amendments that are intended to stop, or provide obstacles to certain projects.** To date, no amendments to Bill 2461 have passed which specifically target landowners and/or businesses to prohibit or delay the specific project. However, the record shows that in other matters, some County councils pass legislation with provisions intended to stop or penalize a specific project, or specific industry. These usually result in lawsuits, payment of attorney’s fees and costs by the county and often the counties end up paying the attorney’s fees for the other side. If any such amendments were proposed relating to Bill 2461, LURF would **oppose** them.

For the reasons stated above, LURF generally supports Bill 2461, Draft 2, and respectfully requests that the Council favorably consider and pass this bill.

Thank you for the opportunity to present testimony regarding this important matter.

## Allison Arakaki

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**From:** Darrellyne Caldeira  
**Sent:** Wednesday, October 22, 2014 7:49 AM  
**To:** Allison Arakaki  
**Subject:** FW: Bill 2461

-----Original Message-----

**From:** Elijah Frank [mailto:[esfhawaii@hotmail.com](mailto:esfhawaii@hotmail.com)]  
**Sent:** Tuesday, October 21, 2014 8:59 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha Council Members,

Please drop the shoreline setback exemption from this Bill. I strongly disagree with developing our remaining shorelines on large properties. Who will this benefit? Certainly not our future generations. I do not think our children and grandchildren will praise a law that made it easier to develop closer to our ocean and shoreline. Let's think about the long term future of our island and the shorelines that make Kaua'i unique. Our shorelines should be fought for and protected not built on and developed. When voting on this bill I ask you all to be leaders for a better tomorrow.

Mahalo no,

Elijah Frank

Sent from my iPhone

## Allison Arakaki

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**From:** Al Albergate <alalbergate@aol.com>  
**Sent:** Sunday, October 19, 2014 3:31 PM  
**To:** Council Testimony  
**Subject:** proposed exemption to shoreline exemption

Dear County Council members,

Please drop the shoreline setback exemption in Bill 2461. We don't need any building closer to the ocean.  
Mahalo,

al

Al Albergate  
alalbergate@aol.com

## Allison Arakaki

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**From:** Darrellyne Caldeira  
**Sent:** Monday, October 20, 2014 8:24 AM  
**To:** Allison Arakaki  
**Subject:** FW: Bill 2461

**From:** Lisa Anselme [mailto:director@healingbeyondborders.org]  
**Sent:** Friday, October 17, 2014 5:56 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

I support council member Mason Chock who has proposed dropping the exemption in Bill 2461. I wish to see Kauai and its coastlines pristine for its people and its wildlife.

Bill 2461 has many positive features; however, it includes an unfortunate exemption for coastal properties that are 30 feet in elevation above rocky shorelines. This exemption would allow developers a 40-foot setback. Existing law requires larger properties to have a 100-foot setback.

The exemption also sets a disconcerting precedent by telling developers we're willing to change our laws for them. In my opinion, such laws inadvertently encourage disrespect. This is certainly not the intention of Kauai's hard-working Council, but we do teach people how we're willing to be treated.

Some coastline areas are also vital for our native seabirds. The birds are already facing huge global challenges. As the NW Hawaiian Islands get submerged by rising seas, Kaua'i is destined to be a Noah's Ark for Laysan albatross. Why would we voluntarily sacrifice their last safe place? They ask for so little. If developers are encouraged to believe they are more valuable to us than our native birds---or our fish or our soils or our coastlines---we should not be surprised if they feel more valuable than many other native places, values and traditions.

Councilmember Mason Chock has proposed dropping the exemption in Bill 2461.

Sincerely,  
Lisa

Lisa Anselme RN, BLS, HN-BC, CHTP/I  
Executive Director, Healing Touch International, Inc.  
dba Healing Beyond Borders  
445 Union Blvd. Suite 105  
Lakewood, CO 80228  
Ph: 303.989.7982  
Email: [director@healingbeyondborders.org](mailto:director@healingbeyondborders.org)  
Web: [www.HealingBeyondBorders.org](http://www.HealingBeyondBorders.org)

## Allison Arakaki

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**From:** Diane G Armstrong <dianegarmstrong@gmail.com>  
**Sent:** Saturday, October 18, 2014 10:34 AM  
**To:** Council Testimony  
**Subject:** Hooray for Mason Chock!

Council member Mason Chock has proposed dropping the setback exemption in Bill 2461. Hooray for him! We must not reward developers by changing this setback!

Diane G. Armstrong, Ph.D.  
Princeville

## Darrellyne Caldeira

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**From:** Mika Ashley-Hollinger <kupono.aina@gmail.com>  
**Sent:** Wednesday, October 15, 2014 1:45 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha Council Members; In regards to Bill 2461, Please Do Not change our existing shoreline setback laws. This would not only be detrimental to the island and it's people, it could be devastating for our endangered native birds. The existing 100 foot setback is more than adequate for any type of development. Mahalo in advance, for making the right choice for Kaua'i.

Peace

Mika Ashley-Hollinger

**Allison Arakaki**

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**From:** Darrellyne Caldeira  
**Sent:** Friday, October 17, 2014 8:57 AM  
**To:** Allison Arakaki  
**Subject:** FW: BILL 2461

**From:** Richard Denham Beach [mailto:rbeach@hawaii.rr.com]  
**Sent:** Friday, October 17, 2014 6:46 AM  
**To:** Council Testimony  
**Subject:** BILL 2461

ATTENTION MASON CHOCK AND ALL COUNCIL MEMBERS :

WE KNOW THAT ALL OF YOU HAVE GIVEN MUCH THOUGHT TO THIS VERY IMPORTANT BILL, I ASK THAT YOU CONSIDER ONE OF THE MANY REASONS WHY THIS BILL WILL FURTHER DIVIDE

THE ISLAND . FOR YEARS THERE HAS BEEN THE PERCEPTION OF US LOCALS VS. THE WEALTHY HALOLE COMING TO KAUAI AND KNOWING THEY CAN BUY THE CHOICE LOCATIONS . AFTER

ALL MONEY SPEAKS VOLUMES .

OUR FEARS ARE THIS BILL COULD DIVIDE US EVEN MORE. THE COAST LINE SHOULD BE ACCESSIBLE TO ALL. . THE FAVORITE FISHING GROUNDS AND PATHS TO THE SHORE SHOULD REMAIN UNCHANGED.

I PERSONALLY HAVE HEARD OF ONE INCIDENT THAT IS MULTIPLIED WAY TOO OFTEN.

IN WAILUA , AT ONE OF THE CONDOS NEAR THE SEASHELL RESTAURANT , TOURISTS WERE SITTING ON THE BLUFF WATCHING " THE DARK NATIVES " , YOUNG GIRLS AND BOYS IN THEIR TEENS , THERE TO DO A BEACH CLEAN UP AND SET THEIR FISHING POLES.

WHEN THEY OVERHEARD THE TOURIST EXCLAIM " OH LOOK AT THE LITTLE NATIVES, LETS PHOTOGRAPH THEM " ( THEIR WORDS , NOT MINE.)

DO WE REALLY WANT TO LEGISLATE EXCEPTIONAL OPPORTUNITY FOR THOSE PRIVILEGED FEW TO THREATEN THE ACCESS OF ALL OUR PEOPLE TO THE MOST SPECIAL PLACES ON OUR COASTLINES ?

## Allison Arakaki

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**From:** Lynette Brooks <lerkbrooks@yahoo.com>  
**Sent:** Saturday, October 18, 2014 2:58 PM  
**To:** Council Testimony  
**Subject:** Building setback near beaches

As a frequent visitor and land owner on Kauai (4 years to retirement), I am writing to urge you to not reduce the required building setback on property near beaches. one of the things that make Kauai beaches nicer than California beaches is that houses do not line them. The current setback and the vegetation makes a walk on the beach seem more distant from development than it actually is, and that is a positive thing.

Thank you,  
Lynette Brooks

## Allison Arakaki

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**From:** Dr. Brownstein <dr.brownstein@hawaiiantel.net>  
**Sent:** Friday, October 17, 2014 11:39 PM  
**To:** Council Testimony  
**Subject:** shoreline setback exemption in Bill 2461

Dear Honorable Sirs and Madams,

**Please drop the shoreline setback exemption in Bill 2461.**  
**The exemption appears to set a an unfavorable precedent for**  
**Future development and building on Kauai that could threaten our**  
**Natural ocean vistas and wildlife sanctuaries, including future migratory seabird**  
**nesting sites such as the albatross.**  
**Thank you for your careful and thoughtful deliberation on this matter.**

Sincerely yours,  
Dr. Arthur Brownstein, M.D.  
Hale Lea Medical Clinic  
Kilauea, HI  
Assistant Clinical Professor of Medicine  
University of Hawaii at Manoa (1993-2008)  
Former Medical Director: Princeville Medical Clinic  
Former USAF Flight Surgeon: Pacific Air Forces  
Clark Air Base, Republic of the Philippines

## Allison Arakaki

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**From:** PAMELA BURRELL <pamelaburrell@me.com>  
**Sent:** Saturday, October 18, 2014 10:47 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

Mahalo Council-member Mason Chock,

I could not agree more with forgoing the setback exemption of 40' in Bill 2461. Leaving the set back at 100' is very prudent.

Hopefully you receive adequate support on this issue from your fellow council members.

Sincerely,

Pamela Burrell  
Kilauea

## Allison Arakaki

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**From:** Cathy <tradewindsla@hawaiiintel.net>  
**Sent:** Saturday, October 18, 2014 7:45 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

For nine years I have volunteered to collect data on the Laysan albatrosses that nest on Kauai, and I was alarmed when I heard that some of their nesting areas could be threatened.

I am sending this email to protest the part of Bill 2461 that would allow an exemption to the 100 foot setback rule for developers building homes on property 30 feet in elevation above the shoreline. This part of this bill would make developers and the wealthy 1% very happy, but it would ruin the views of the people here who use the public beaches, and it would not be a good day for the Laysan albatrosses that nest on this island.

As islands in the Pacific disappear under the rising sea level caused by climate change, and seabirds lose their nesting habitat, it is our responsibility to protect the albatrosses that nest here. Albatrosses nest on the ocean bluffs so their chicks can fledge safely. They already have colonies established in the area that houses could be built on if this exemption is allowed. Unlike developers, these birds cannot simply move further back from the bluff, they are bound by instinct. Hopefully, developers are not.

Albatrosses can't vote, but I can, and so can all of my friends who are equally outraged by the thought of this preferential treatment. We will all be checking to see who votes for developers and who votes for the rest of us and for the albatrosses.

## Darrellyne Caldeira

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**From:** simone correa <correasilicone@hotmail.com>  
**Sent:** Thursday, October 16, 2014 4:20 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

Dear Council members,

Please, **drop the shoreline setback exemption in Bill 2461.**

We need to preserve the shoreline for the people, the environment and the native seabirds.

Mahalo,

Simone Correa

**Allison Arakaki**

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**From:** Diane de Vries <diane.e.devries@gmail.com>  
**Sent:** Saturday, October 18, 2014 9:21 AM  
**To:** Council Testimony  
**Subject:** I am Opposed to dropping the setback from 100' to 30'

From the shoreline.

Thanks, Councilmember Chock for this easy direct way to have input. very innovative! We should see more of this method.

Diane de Vries

Sent from my iPad

## Allison Arakaki

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**From:** Darrellyne Caldeira  
**Sent:** Friday, October 17, 2014 7:55 AM  
**To:** Allison Arakaki  
**Subject:** FW: Bill 2461

-----Original Message-----

**From:** Marj Dente [mailto:mdente@hawaii.rr.com]  
**Sent:** Thursday, October 16, 2014 7:22 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha All Council Members.

Regarding Bill 2461, soon to be discussed. I am not in favor of the shoreline setback exemption. In my opinion, this sets a VERY bad precedent.

Thank you for your consideration.

Marj Dente, 6335-B Waipouli Rd., Kapa'a, HI 96746, 823-8162

## Allison Arakaki

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**From:** Darrellyne Caldeira  
**Sent:** Monday, October 20, 2014 2:43 PM  
**To:** Allison Arakaki  
**Subject:** FW: Testimony on Bill 2461

**From:** Emily DeVille [mailto:[edeville@hawaii.edu](mailto:edeville@hawaii.edu)]  
**Sent:** Monday, October 20, 2014 8:59 AM  
**To:** Council Testimony  
**Subject:** Testimony on Bill 2461

Aloha Kauai County Council Members,

At present our Kauai Shoreline Setback bill is one of the strongest, most progressive bills in the country. The proposed amendment, 827.3, the 'bright line exemption' would severely weaken the protection of Kauai's rocky shoreline. Please reject the 'bright line exemption' and treat all coastal properties the same. Whether they are sandy or rocky shorelines, whether the lots have been studied or not, it is imperative that all coastal development be adequately set back. Please consider the importance of protecting all of Kauai coastal areas. Thank you for your consideration.

Emily DeVille, University of Hawaii Manoa Student

**Darrellyne Caldeira**

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**From:** mrsdierker@aol.com  
**Sent:** Wednesday, October 15, 2014 10:11 AM  
**To:** Council Testimony  
**Subject:** drop the shoreline setback exemption in Bill 2461

I am a voting resident of Kauai, living permanently in Hanalei, and I am writing to urge you to **drop the shoreline setback exemption in Bill 2461.**

Mahalo,  
Susan Dierker  
POB 1622  
Hanalei

## Darrellyne Caldeira

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**From:** David Dinner <gentlewaver@gmail.com>  
**Sent:** Wednesday, October 15, 2014 11:13 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

Dear Council members

Please do not allow exemptions to the existing shoreline setback. Our shorelines are already threatened by developments too close to the shoreline and, with climate change, we could be setting ourselves up for serious difficulties in the future. For the view plane, for the shore birds, for the future of Kauai, please keep the shoreline setback where it is. Mahalo for your consideration

Aloha,  
David Dinner  
Kilauea

Sent from my iPad with Aloha

## Allison Arakaki

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**From:** poppylu@hawaii.rr.com  
**Sent:** Saturday, October 18, 2014 1:05 PM  
**To:** Council Testimony; Gary Hooser  
**Subject:** Bill 2461

Bill 2461, Shoreline Setback Requirements.

WE do not approve an exception for properties 30 ft. in elevation to have a reduced setback of 40 ft.! In considering Bill 2461 delete the 40 ft. setback exception!

Bob & Lila Dolan, Kalaheo

## Allison Arakaki

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**From:** Roberta Griffith <griffithr138@yahoo.com>  
**Sent:** Saturday, October 18, 2014 1:16 PM  
**To:** Council Testimony  
**Cc:** Roberta Griffith  
**Subject:** Unable to be present, sending testimony to Council from Roberta Griffith

To the Kaua'i County Council:

Please vote to remove the setback exemption from Bill 2461.

I totally agree with council member Mason Chock that the setback exemption must be dropped from bill 2461.

Our coastlines are endangered. We must be more vigilant in protecting them against developers incursions. I do not support the addition of the proposed change for the setback exemption. I am shocked that this exemption is being considered.

I watched setback exemptions take place near my mother's property some years back in Satellite Beach, Florida, with disastrous results, including the loss of nesting areas for pelicans. We must be more protective while the opportunity exists because if we are not, there is no going back.

Respectfully,

Roberta Griffith  
Resident

3813 Makani Kai Place  
PO Box 23104  
Princeville, Kaua'i, HI 96722  
(808) 826-4710

griffithr138@yahoo.com  
www.RobertaGriffith.com  
www.galerie103.com

**Allison Arakaki**

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**From:** Patricia Hanwright <patrish777@gmail.com>  
**Sent:** Thursday, October 16, 2014 6:25 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

I am opposed to allowing the exemption that would allow a 40 ft. setback.

I am a coastal land owner but feel the priorities of protecting the native birds and environment out way the need to build closer to the bluffs. Let's keep Kauai, Kauai.

Thank you,

Patricia Hanwright  
Larsens Beach Road.  
Anahola, Hi. 96703

## Darrellyne Caldeira

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**From:** Kolea <kolea91@aol.com>  
**Sent:** Wednesday, October 15, 2014 1:00 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha Kauai County Council Members,

I am writing in strong opposition to the set back exemption allowed in bill 2461 for building on rocky elevated shorelines. There is no reason to allow this kind of intrusion into the shore that we all enjoy. I wonder who is behind such an exemption? It must be developers who probably don't even live on the island.

Kaua'i's beaches are a treasure for all citizens and visitors to enjoy. Likewise I feel that we all must take responsibility for taking care of this valuable resource. I do not think the Kaua'i County Council is taking due care of our shoreline resource in allowing this kind of exemption into the beach setback. We only get one chance to make a decision like this, once a building is built it will not be taken down. Thinking ahead to the Kaua'i we want for the children, grandchildren, of today and tomorrow, I do not see how you could possibly allow this exemption which would forever change the appearance and feeling of our beaches.

The results of this exception would be proliferation of development along the shoreline squeezing the visual space that all should be able to enjoy in perpetuity.

Please vote to remove this exemption from bill 2461.

Malama pono,

Marcia B. Harter  
Anahola, HI

## Darrellyne Caldeira

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**From:** Stuart Hollinger <stuart.hollinger@gmail.com>  
**Sent:** Wednesday, October 15, 2014 11:59 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha Council Members

I humbly ask for your kokua. Please delete the shoreline exemption language in Bill 2461. This shoreline exemption does not benefit our island or our people. The current 100 foot set back is more than adequate guide lines for any future development close to the shoreline on our island.

Mahalo

Stuart Hollinger  
Kaua'i County Planning Commissioner 2006/2008

## Allison Arakaki

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**From:** Frank Kelly <afkirish@gmail.com>  
**Sent:** Saturday, October 18, 2014 8:54 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

We write in support of Mason Chock's amendment to drop the setback exemption.  
The setback benefits a select few and potentially harms the entire County populace.

Mahalo!

Frank & Marilyn Kelly

Koloa

## Allison Arakaki

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**From:** Jill Landis <hulagal@hawaiiantel.net>  
**Sent:** Saturday, October 18, 2014 10:06 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha Kauai County Council,

We are both voters **OPPOSED** to the setback exemption in Bill 2461. We agree with Mason Chock that the setback exemption should be dropped from Bill 2461.

We are also against any setback exemptions and development on the ridge directly above the Hanalei River.

Mahalo for your consideration,

Jill Landis

Stephen Landis

Hanalei

**Darrellyne Caldeira**

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**From:** Agnes Marti-Kini <keao@me.com>  
**Sent:** Wednesday, October 15, 2014 9:55 AM  
**To:** Council Testimony  
**Subject:** DROP BILL 2461

ALOHA FROM ANAHOLA,  
WITH GLOBAL WARMING AND HURRICANES TAKING AWAY OUR SHORELINE ALREADY....HOW  
CAN YOU RESPONSIBLY AGREE TO LET THE DISTANCE GET SHORTER? THIS WILL BE A HUGE  
LIABILITY FOR THE COUNTY. DUH!!!!

BESIDES IT WILL LEAVE LESS LAND FOR THE BIRDS TO LIVE ON AND THE PEOPLE TO PLAY ON.  
SAY NO, NO, NO TO 2461!!!

MAHALO,  
AUNTY AGGIE

## Allison Arakaki

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**From:** Barbara Mayer <bamayer@gmail.com>  
**Sent:** Sunday, October 19, 2014 5:02 PM  
**To:** Council Testimony  
**Subject:** submitting testimony in regard to Bill 2461

members of the County Council of Kaua'i --

As a long-time resident and science educator in our state of Hawai'i (see signature below), I would like to speak against Bill 2461. Kaua'i is my "best friend" to the west of my island of O'ahu, and I would not like to see her develop to the extent that my island has.

I do not believe the 40-foot shoreline setback would serve the best interests of Kaua'i, neither its humans nor its seabirds. Humans need the esthetics of bluffs unencumbered with houses, while native seabirds need the coastal strip for nesting. We already have seen evidence that climate change will bring increasing sea levels. Sea birds nesting on the low-lying atolls to the northwest of Kaua'i will need to relocate to the high-ground of Kaua'i's bluffs. We must keep the coastal swath ready for them.

Managing Kaua'i's development with an eye toward sustaining its wildlife will undoubtedly be a wise economic, ecotourism decision for the future.

Mahalo for considering my opinion;  
aloha,  
Barbara

--

Barbara Mayer  
MS; nature, science educator  
20 years classroom instruction  
curriculum and web author  
Waimānalo, HI, USA  
[808-259-8342](tel:808-259-8342)  
[Connect on LinkedIn](#)

## Allison Arakaki

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**From:** Jonathan McRoberts <jonathanmcroberts4@gmail.com>  
**Sent:** Saturday, October 18, 2014 9:01 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha,

I want to add my support to Councilman Mason Chock's proposal to drop the setback exemption in Bill 2461. I spend a lot of my recreational time in the water and do not want to look back at luxury homes perched on the cliffs. More importantly, I feel that we need to preserve the space along the cliffs that provides valuable habitat for our sea bird populations.

Jonathan McRoberts  
2214 Liliuokalani Street  
Kilauea, HI 96754

mailing address:  
PO Box 1129

808-652-6863

## Allison Arakaki

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**From:** Darrellyne Caldeira  
**Sent:** Monday, October 20, 2014 8:29 AM  
**To:** Allison Arakaki  
**Subject:** FW: Bill 2461

-----Original Message-----

**From:** Lorraine Newman [mailto:hulahula@hawaii.rr.com]  
**Sent:** Sunday, October 19, 2014 8:42 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha,  
I'll keep this brief :-)  
Regarding Bill 2461 currently under consideration...  
Please delete the setback exemption that reduces the current 100ft shoreline setback.

I understand council member Mason Chock has proposed dropping this setback exemption, and I emphatically support his position.

Mahalo,  
Lorraine Newman  
Kilauea

## Darrellyne Caldeira

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**From:** Mark <amazingwater5@hotmail.com>  
**Sent:** Wednesday, October 15, 2014 7:34 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

Dear Kauai Council,

I would like speak in opposition of bill 2461 relating to shoreline setback and would support the amendment proposed by councilmember Chock. Please consider the visual impact proposed bill 2461 would have to the future in perpetuity to our coastline.

Mahalo,

Mark Ono

**Allison Arakaki**

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**From:** rgo@eaglefocus.com  
**Sent:** Saturday, October 18, 2014 3:47 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

Please, drop the setback exemption in Bill 2461. Do it for Kauai. PLEASE!

Thank you for your consideration,

Gordon Oswald

**Darrellyne Caldeira**

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**From:** Sylvia Partridge <sylpartridge@yahoo.com>  
**Sent:** Wednesday, October 15, 2014 10:57 AM  
**To:** Council Testimony  
**Subject:** Bill 2461 - please drop the shoreline setback exemption

Aloha Council Members,

I'm writing to say that I feel it's very important to drop the shoreline setback exemption in Bill 2461. Changing our laws for developers is simply not OK and sets a terrible precedent. We want to continue to treasure our aina as best we can and, if there's any change at all in the shoreline setback, it should be for more than 100 feet, not less.

Thank you for considering this point of view.

Sylvia Partridge  
3800 Kamehameha Rd., # 22  
Princeville, HI 96722

## Allison Arakaki

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**From:** Darrellyne Caldeira  
**Sent:** Monday, October 20, 2014 8:29 AM  
**To:** Allison Arakaki  
**Subject:** FW: Setback Exemption

**From:** nickilorayn@aol.com [mailto:nickilorayn@aol.com]  
**Sent:** Monday, October 20, 2014 7:12 AM  
**To:** Council Testimony  
**Subject:** Setback Exemption

Aloha Kauai Council Members,

It is with the utmost concern for the future of our island, our native bird and plant species that I urge you to remove the shoreline setback exemption proposed for bill 2461 and urge passage of this bill without exemptions.

Kauai is one of the few places in the main Hawaiian Islands where Laysan albatross and Wedge tailed shearwaters still can find nesting sites along ocean bluffs. Allowing this shoreline setback exemption will decrease the land space available for these nesting seabirds. The future of these birds and other native species will certainly be adversely affected. Certainly future development can still occur without decreasing this already fragile shoreline ecosystem. Please do not include a shoreline setback exemption in bill 2461.

Thank you for your consideration and your votes to preserve the aina

With aloha,

Nicki Lorayn Pignoli  
Kilauea, HI

## Allison Arakaki

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**From:** Darrellyne Caldeira  
**Sent:** Friday, October 17, 2014 2:31 PM  
**To:** Allison Arakaki  
**Subject:** FW: Attention Mason Chock

**From:** TxPurpleRose34@aol.com [mailto:TxPurpleRose34@aol.com]  
**Sent:** Friday, October 17, 2014 2:13 PM  
**To:** Council Testimony  
**Subject:** Attention Mason Chock

### *Regarding Bill 2461*

*I do not literally own property in Kaua'i nor do I live there permanently. However, I do own timeshare property at Lawai Beach Resort. Over many years, I have made Kaua'i my home away from home because I love the Island, its people, and its wildlife.*

*Developers everywhere are granted too much latitude by the governing bodies of the areas which they hope to develop because of the dollars involved.*

*Kaua'i is the last home of many of Hawaii's indigenous wildlife including mammals and birds. I believe that the shoreline setback as it has been maintained over the years must be protected to protect our birds and wildlife who call those areas home.*

*The council should not grant any exception to that setback.*

*Sincerely yours,*

*Vaden W. Riggs  
336 Catlin Circle  
Highland Village, TX 75077-6777*

## Allison Arakaki

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**From:** Darrellyne Caldeira  
**Sent:** Monday, October 20, 2014 2:43 PM  
**To:** Allison Arakaki  
**Subject:** FW: Bill 2461 re: shoreline setbacks

**From:** River Riim [mailto:riverrriim@yahoo.com]  
**Sent:** Monday, October 20, 2014 2:43 PM  
**To:** Council Testimony  
**Subject:** Bill 2461 re: shoreline setbacks

What about those Kauai property owners who built their homes, bought properties, over the years for view-planes established with 100' setbacks? How fair would it be for those homeowners and property owners for CoK to change to 40' setbacks now allowing for structures to be built and properties sold with new building permits allowing a setback less than a hundred feet?

Also, the ocean is rising, currents changing, the natural shorelines are eroding meaning someone who built a structure with a 40' setback will be seeking sea-wall shoreline erosion mitigation permits far sooner than those who built at 100' setbacks.

---River,  
Hanalei, Kaua`i

## Darrellyne Caldeira

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**From:** Cathi Robbins <cathirobbins@hotmail.com>  
**Sent:** Wednesday, October 15, 2014 2:00 PM  
**To:** Council Testimony  
**Subject:** Drop the shoreline setback exemption in Bill 2461

Please read the email below. I agree that we should NOT pass the law allowing the shoreline setbacks to be changed nor allow for any shoreline exemptions.

Yours Truly,  
Cathi Robbins

Dear all,

**Next week the County Council is scheduled to vote** on a law related to shoreline setbacks. I have great respect for our Councilmembers' diligence in this effort. Bill 2461 has positive features, but it also allows a disturbing setback exemption for coastal properties all over the island, providing those properties are 30 feet in elevation above a rocky shoreline. This means a developer can build much closer to the shoreline than he can now. Existing law requires larger properties to have a 100 foot setback.

Imagine a football on the 13-yard line. The distance between that football and a touchdown is the same distance as a building could be from the established shoreline, if Bill 2461 passes. Imagine the bluffs above your favorite rocky shorelines where you fish or surf or pick limu or hang out with your family. Can you picture estates all along those bluffs? Is that what we'd like to see on Kaua'i? Either way, our Council members need to know how we feel.

In my estimation, the exemption sets a bad precedent. It inadvertently tells developers that we want them so badly that we're willing to change our laws for them. This is a questionable way to start any relationship. It teaches them to disrespect us. If we so easily violate our own guidelines for other people, we should not be surprised when those same people violate us again.

Some coastline areas are also vital for our native seabirds. They are already facing huge challenges. Sea level rise will soon submerge Midway and the other low-lying Northwestern Hawaiian Islands. When the albatross mother ship goes down, where will the birds go? Kaua'i is their Noah's Ark. How could there possibly be a legitimate reason to sacrifice their last safe places in the world? If we tell developers that they are more valuable than our native birds---or our fish or our soils or our coastlines---we may be indicating to them that they are more valuable than *everything* native. We encourage them to care by modeling it, and by our laws.

A lot of people do care, of course, including our leaders. Councilmember **Mason Chock** has introduced language that would drop the setback exemption in Bill 2461. He may not yet have the Council votes to support his position. If you agree with him, please send an email to [counciltestimony@kauai.gov](mailto:counciltestimony@kauai.gov) and **ask the Council to drop the shoreline setback exemption in Bill 2461**. You can literally get this done in two minutes. Testify in person if you can. Either way, do it quickly. The Council will be considering the bill on **October 22**.

Mahalo

PO Box 536  
Hanalei, HI 96714

October 22, 2014

Jay Furfaro, Chair  
Kaua'i County Council  
Lihue, HI 96766

**TESTIMONY: Bill No. 2461, Draft 2 – Shoreline Setback Ordinance**

Aloha Chair Furfaro and  
Council Members

Thank you for this opportunity to provide additional comments on Bill 2461.

**Amendments to Sec. 8-27.0 Purpose<sup>1</sup>**

- The “Purpose” language in Draft 2 is inconsistent with the original language in the first shoreline setback purpose (1971). See Attachment A.
- The draft language in *Sec. 8-27.0 Purpose*, diminishes, eliminates, and reduces the actual purpose of the bill and should be deleted.
- Shoreline Bill #863 (01-25-08) contains descriptive language that could be updated; or
- The justification and description of a “Purpose” could be replaced with more articulate language such as a modified version based on the Maui ordinance. See Attachment B.

**Amendments to Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line** (aka “bright line” section)

- We are in full support of Floor Amendment CM#1
- We are in full support of Floor Amendment CM#2

**Amendments deleting “Activity” throughout Bill 2461**

- For the record, please include our numerous testimonies on this Bill and also those regarding the deletion of “activity” and “activities” being deleted from shoreline setback requirements in Bill 2461.
- We continue to be concerned with the legality of deletion of “activities” from regulation in this draft Shoreline Setback ordinance. If the County Attorney wrote an opinion on the subject, will it be released to the public before your decision?

Mahalo,  
Caren Diamond and Barbara Robeson

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<sup>1</sup> **CHARTER: ARTICLE IV, ORDINANCES AND RESOLUTION**, Section 4.02. Introductions, Consideration and Passage of Ordinances and Resolutions, C. No bill shall be so amended as to change its original purpose. Every bill, as amended, shall be in writing before final passage.

## Attachment B

### Proposed Amendment Sec. 8-27.0 "PURPOSE"

One of the most important and significant natural resources of the County of Kauai is its shoreline environment. Due to competing demands for utilization and preservation of the beach and ocean resources, it is imperative:

(1) That use and enjoyment of the shoreline area be ensured for the public to the fullest extent possible;

(2) That the natural shoreline environment be preserved;

(3) That man-made features in the shoreline area be limited to features compatible with the shoreline area;

(4) That the natural movement of the shoreline be protected from development;

(5) That the quality of scenic and open space resources be protected, preserved, and where desirable, restored; and

(6) That adequate public access to and along the shoreline be provided.

These steps are necessary because development and other man-made improvements have resulted in encroachment of structures near the shoreline and, in numerous instances, erosion and other disturbances affecting the natural movement of the shoreline. Moreover, these steps are also necessary because the Hawaiian Islands are subject to coastal natural hazards such as, tsunamis, high wave action, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose hazards to residences and other structures near the shoreline. These hazards may also necessitate the need to harden the shoreline to protect structures which may have an adverse impact on the environment. Further, continual replacement of structures damaged or destroyed by ocean conditions may cause an economic hardship to other flood insurance policy holders by the increase in premiums. Consequently, the purpose of this chapter is to establish shoreline rules which regulate the use and activities of land within the shoreline environment in order to protect the health, safety, and welfare of the public by providing minimum protection from known coastal natural hazards; and to ensure that the public use and enjoyment of our shoreline resources are preserved and protected for future generations in accordance with the Hawaii coastal zone management law, HRS chapter 205A. [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I and III, (Imp: HRS §205A-1, 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)

## Darrellyne Caldeira

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**From:** Helen Savadge <helen@foxfyrecattery.com>  
**Sent:** Thursday, October 16, 2014 1:39 PM  
**To:** Council Testimony  
**Subject:** Bill 2461

As a constituent I am writing to request that the council please drop the shoreline setback exemption in Bill 2461.  
Thank you  
Helen Savadge

**Allison Arakaki**

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**From:** Michael L. Smith <mlsmithco@hotmail.com>  
**Sent:** Saturday, October 18, 2014 6:05 AM  
**To:** Council Testimony  
**Subject:** Drop the setback exemption in Bill 2461

Dear Honorable Council Members,

As a permanent resident, voter and tax payer, I am asking you to drop the setback exemption in Bill 2461. By doing this you will be acting in favor of all your constituents and not just a minority of money driven interests.

Mahalo,

Michael L Smith  
389 Laaukea Place  
Kapaa, HI. 96746

808-634-3335

mlsmithco@hotmail.com

## Darrellyne Caldeira

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**From:** davidsternucb@gmail.com on behalf of david stern <dsstern@berkeley.edu>  
**Sent:** Wednesday, October 15, 2014 2:54 PM  
**To:** Council Testimony  
**Cc:** Jane Stern  
**Subject:** Please drop the shoreline setback exemption in Bill 2461

Please don't cave in to pressure from developers.

Mahalo!

David and Jane Stern  
4-4950 Kuhio Hwy  
Anahola

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<http://gse.berkeley.edu/people/david-stern>

## Darrellyne Caldeira

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**From:** Bonnie Stowe <bonnieturtle@hawaii.rr.com>  
**Sent:** Wednesday, October 15, 2014 10:17 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

Please drop the shoreline setback exemption in Bill 2461.

Mahalo nui loa,  
Bonnie Stowe



## Allison Arakaki

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**From:** Diana Thomas <dianathomas222@gmail.com>  
**Sent:** Saturday, October 18, 2014 11:49 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

I do not support Bill 2461

It may have many positive features; however, it includes an unfortunate exemption for coastal properties that are 30 feet in elevation and this is not acceptable.

we should not be willing to change our laws to make the developers and a few land owners happy... especially at the cost of our beloved birds, and natural habitat.

Thank you, Diana

Diana Thomas  
415-302-4939

## Allison Arakaki

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**From:** Robin Torquati <islandflowerbird@gmail.com>  
**Sent:** Sunday, October 19, 2014 3:11 PM  
**To:** Council Testimony  
**Subject:** shoreline setback

Dear Council members,

Please drop the shoreline setback exemption in Bill 2461. Our shorelines are already diminishing and shallow waters polluted from bad management practices.

Thank you,

Robin Torquati

## Allison Arakaki

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**From:** Cushla Tucker <tcushla@gmail.com>  
**Sent:** Saturday, October 18, 2014 11:38 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

Aloha Councilman Chock,

Please do not let the shoreline set back be changed from the current 100 feet to 40 feet. Enough already!

Sincerely,

C. M. Cushla Tucker

Omao

**Allison Arakaki**

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**From:** Wicki Van De Veer <wickiart@hotmail.com>  
**Sent:** Saturday, October 18, 2014 9:03 AM  
**To:** Council Testimony  
**Subject:** Bill 2461

I encourage the Council to drop the setback exemption in Bill 2461. Mahalo, Wicki Van De Veer

Sent from my iPad

## Darrellyne Caldeira

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**From:** Johanna Ventura <kokua411@gmail.com>  
**Sent:** Wednesday, October 15, 2014 6:57 PM  
**To:** Council Testimony  
**Subject:** drop the shoreline setback exemption in Bill 2461

Please drop the shoreline setback exemption in Bill 2461. We need to strengthen our existing laws that protect our island's shared resources.

Mahalo nui loa!  
Johanna

Johanna Ventura  
[kokua411@gmail.com](mailto:kokua411@gmail.com)  
(c) 808.346.3461

October 21, 2014

Kauai County Council  
Attention: Honorable Council Chair Jay Furfaro  
Honorable Councilman Tim Bynum, Planning Committee Chair  
Honorable Councilwoman JoAnn Yukimura, Planning Committee Vice Chair  
Honorable Gary Hooser  
Honorable Councilman Mel Rapozo  
Honorable Councilman Mason Chock  
Honorable Councilman Ross Kagawa  
4396 Rice Street  
Lihue, Hawaii 96744

Re: Bill 2461

Dear Honorable Chair:

My name is Denise Wardlow and I am the General Manager of The Westin Princeville Ocean Resort Villas. I am providing testimony in favor of Bill 2461 as it is written; and have concerns with the recent floor amendments. We maintain the following:

1. The Shoreline Setback Ordinance should only apply to lots abutting the shoreline (and not to non-abutting lots).

2. Only structures or prohibited activities proposed within 500 feet of the shoreline should be required to apply for a shoreline setback determination. Structures or prohibited activities proposed beyond 500 feet of the shoreline should be exempt from the application process.

3. There should be an exemption from the shoreline setback determination process for structures and subdivisions that are not subject to coastal hazards where such lots are: located 30 feet above mean sea level; not located in a flood or tsunami zone; and are located on a rocky (non-eroding) shoreline.

4. The arbitrary shoreline setbacks contained in Ordinance 887 should be replaced by a formula that is based on the coastal erosion rate for each lot, and which distinguishes between: lots located on shorelines which are subject to erosion; and lots located on non-eroding shorelines.

5. Other than the restriction on certain prohibited activities (such as the removal of sand and coral from shoreline areas), the Shoreline Setback Ordinance should not be used to regulate general activities and uses in the shoreline area. General activities and uses should be regulated by the Special Management Area ("SMA") Permit process.

6. The Shoreline Setback Ordinance should only be used for its intended purpose, which is to protect life, property and coastal resources from coastal hazards. It should not be misused for the purpose of creating buffers along the shoreline to establish view plane setbacks. Matters relating to view planes should instead be addressed by the SMA Permit process or by the application of the provisions in the Comprehensive Zoning Ordinance relating to the establishment of scenic corridors.

Thank you for your consideration of these points in considering the passing of Bill 2461.

Sincerely,



**Allison Arakaki**

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**From:** Valerie Weiss <valerieweiss31@gmail.com>  
**Sent:** Saturday, October 18, 2014 2:51 PM  
**To:** Council Testimony  
**Subject:** BILL 2461

10/18/2014

RE: BILL 2461 – Setbacks

Aloha Council,

Please do not allow the setback exemption to go to 40 feet from 100 feet for coastal property that is 30 feet in elevation above rocky shorelines. How many times have we seen cliffs erode and buildings fall into the ocean and wondered why buildings were permitted so close to the edge? In the interest of common sense, consideration of rising ocean levels, the owners own safety and investment, wildlife habitat and view plains, do not allow setbacks of less than 100 feet.

Mahalo for your consideration.

Valerie Weiss  
6616 Alahele St  
Kapaa