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# HOUSE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A STUDY OF THE SHORELINE  
SETBACK REFERENCE LINE.

1           WHEREAS, shorelines and beaches are one of Hawaii's most  
2 precious natural resources and provide important recreational,  
3 cultural, social, and economic opportunities for residents and  
4 tourists; and

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6           WHEREAS, the shoreline setback system has been established  
7 to serve the dual purpose of protecting Hawaii's beach resources  
8 and reducing the loss of property from erosion, storms, or other  
9 events by establishing a distance mauka of the ocean from which  
10 structures may be built; and

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12           WHEREAS, in implementing shoreline setbacks and the  
13 objectives of the coastal zone management program, the  
14 Legislature mandated that agencies give full consideration to  
15 ecological, cultural, historic, aesthetic, recreational, scenic,  
16 and open space values, and coastal hazards, as well as to needs  
17 for economic development; and

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19           WHEREAS, the shoreline setback system consists of two  
20 components: the reference line and the distance from the  
21 reference line that structures may be built; and

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23           WHEREAS, the reference line currently used is the  
24 "shoreline" as defined by the Hawaii Supreme Court *In re*  
25 *Application of Ashford*, 50 Haw. 314 (1968), and further  
26 clarified in *County of Hawaii v. Sotomura*, 55 Haw. 176 (1973),  
27 and the process of establishing this line is referred to as  
28 "shoreline certification"; and

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30           WHEREAS, the Hawaii Supreme Court established the shoreline  
31 for the purposes of determining ownership as the "upper reaches  
32 of the wash of the waves, usually evidenced by the edge of  
33 vegetation or by the line of debris left by the wash of waves";  
34 and



1  
2 WHEREAS, this definition is inherently ambiguous and  
3 subjective and, as Justice Marumoto in his dissenting opinion in  
4 *Ashford* presciently wrote, "primitive in concept and haphazard  
5 in application and result"; and  
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7 WHEREAS, as argued by the State in *Ashford* and confirmed by  
8 the Hawaii Supreme Court in *Sotomura*, the State has historically  
9 emphasized the vegetation line as the more permanent and stable  
10 monument to identify the shoreline; and  
11

12 WHEREAS, at the time of these court decisions in the late  
13 1960s to early 1970s, vegetation could be better relied upon as  
14 a natural indicator of the wash of the waves; and  
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16 WHEREAS, in more recent years, the urbanization of Hawaii's  
17 coastal lands and intensification of its use has resulted in  
18 extended landscaping along the shoreline; and  
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20 WHEREAS, this increased landscaping, including the use of  
21 saltwater tolerant plants, has, in some cases, distorted the  
22 shoreline for the purpose of establishing the shoreline setback  
23 reference line; and  
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25 WHEREAS, the *Ashford* definition of shoreline has become  
26 problematic for shoreline setback purposes as the vegetation  
27 line can no longer be relied upon as a natural indicator; and  
28

29 WHEREAS, other states and countries must deal with the same  
30 question of how to establish shoreline setbacks and have varying  
31 methods and reference lines for these purposes; and  
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33 WHEREAS, there is rapidly improving technologies, such as  
34 global positioning system, geographic information systems, and  
35 light detection and ranging technology that might provide a more  
36 objective, reliable reference to establish the reference line  
37 for shoreline setbacks; and  
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39 WHEREAS, Senate Concurrent Resolution No. 51, S.D. 1,  
40 Regular Session 2005, requested the Department of Land and  
41 Natural Resources and a working group to conduct a study of the  
42 issues surrounding the shoreline certification process for the  
43 purpose of shoreline setbacks; and  
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1 WHEREAS, the report submitted by the Department did not  
2 explore or analyze alternative methods and technologies that  
3 could be used to establish the shoreline setback line and did  
4 not offer clear recommendations in terms of the Department's  
5 position; now, therefore,

6  
7 BE IT RESOLVED by the House of Representatives of the  
8 Twenty-third Legislature of the State of Hawaii, Regular Session  
9 of 2006, the Senate concurring, that the Auditor is requested to  
10 study the alternative systems and methods for defining and  
11 establishing the shoreline setback reference line; and

12  
13 BE IT FURTHER RESOLVED, as part of the study, the Auditor  
14 is requested to:

- 15  
16 (1) Provide the legal framework for the definition of  
17 shoreline as used to establish the shoreline setback;
- 18  
19 (2) Identify federal, state, and county agencies involved  
20 in coastal zone management in Hawaii, existing coastal  
21 data, and possible funding sources;
- 22  
23 (3) Research and identify methods, systems, and  
24 technologies used in other states and countries that  
25 are used for the purpose of shoreline setbacks;
- 26  
27 (4) Identify alternative shoreline setback lines that  
28 could be used in Hawaii, the pros and cons of each as  
29 applied to Hawaii's varying coastline types, and  
30 associated costs;
- 31  
32 (5) Compare the alternative methods with the current  
33 method being used and make recommendations;
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35 (6) Determine impacts of changing the setback reference  
36 line on use of the shoreline certification process for  
37 ownership purposes and for conservation district  
38 purposes; and
- 39  
40 (7) Identify any other possible changes to Hawaii's  
41 shoreline setback system; and

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43 BE IT FURTHER RESOLVED that the Auditor may hire  
44 consultants to conduct portions or all of the study, provided



1 that any coastal consultant will preferably be one who has  
2 national and international experience with coastal construction  
3 setback systems; and  
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5 BE IT FURTHER RESOLVED that the Auditor is requested to  
6 convene and facilitate an advisory group to provide feedback on  
7 the study that consists of one member each representing:  
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- 9 (1) The Department of Land and Natural Resources;
- 10
- 11 (2) The Department of Business, Economic Development, and  
12 Tourism, Office of Planning;
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- 14 (3) The Department of Accounting and General Services,  
15 Land Survey Division;
- 16
- 17 (4) The University of Hawaii;
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- 19 (5) The planning office of each county;
- 20
- 21 (6) The Office of Hawaiian Affairs;
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- 23 (7) The Hawaii Association of Land Surveyors;
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- 25 (8) Oceanfront landowners;
- 26
- 27 (9) An environmental organization; and
- 28
- 29 (10) A native Hawaiian cultural organization;
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31 with the member in paragraphs (1) through (7), appointed by the  
32 department, agency, or organization named, and with the member  
33 in paragraphs (8) through (10), selected by the Auditor; and  
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35 BE IT FURTHER RESOLVED that the Auditor is requested to  
36 report findings and recommendations, including any proposed  
37 legislation, not later than twenty days prior to the convening  
38 of the Regular Session of 2007; and  
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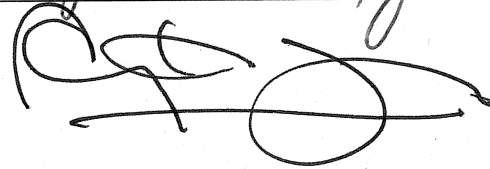
40 BE IT FURTHER RESOLVED that certified copies of this  
41 Concurrent Resolution be transmitted to the Auditor; the  
42 Chairperson of the Board of Land and Natural Resources; the  
43 Attorney General; the Director of the Department of Business,  
44 Economic Development, and Tourism; the Comptroller; the



1 President of the University of Hawaii; the head of each county's  
2 planning office; the Office of Hawaiian Affairs; and the Hawaii  
3 Association of Land Surveyors.

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OFFERED BY:

*Polype P. Abinisman, Jr.*  


MAR 15 2006

