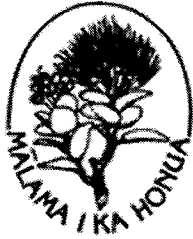


**TESTIMONY**  
**HB 3177 HD1**



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 hawaii.chapter@sierraclub.org

## SENATE COMMITTEE ON WATER AND LAND

March 12<sup>th</sup>, 2008, 2:45 P.M.

(Testimony is 1 page long)

### TESTIMONY IN SUPPORT OF HB 3177 HD1

Chair Hee and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports HB 3177 HD1, increasing the maximum penalty that can be assessed for violations in the state conservation district and providing the Department of Land and Natural Resources (DLNR) flexibility in setting the penalties. The Sierra Club strongly supports efforts to increase penalties against those who violate laws intended to protect our fragile environment. These penalties serve both as a deterrent and as a means to provide resources to repair resource damage done by the violator.

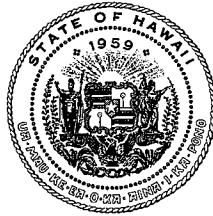
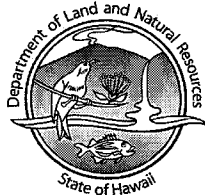
Penalties for violations in Hawaii's most environmentally-sensitive lands—the conservation district—should not simply be part of 'the cost of doing business.' Strong, meaningful penalties are necessary to punish offenders and send a signal to potential offenders of the consequences of their actions. Increased pressure on conservation lands and habitat raises the need for strong deterrents to illegal activities on these lands.

House Bill 3177 HD1 not only increases the maximum penalty allowed to \$10,000 per violation, it wisely provides the DLNR flexibility in setting the penalty based on the scale of the damage, the market value of the resources lost, or other factors.

***We ask that this Committee amend HB 3177 HD1 to include an effective start date of "upon approval."***

Thank you for the opportunity to testify.

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on House Bill 3177, House Draft 1 - Relating To Penalties For Violations Within The  
Conservation District

BEFORE THE SENATE COMMITTEE ON  
WATER AND LAND

March 12, 2008

House Bill 3177, House Draft 1 is an Administration bill, which proposes to increase the maximum fine for violations within the Conservation District from not more than \$2,000 per violation to not more than \$10,000 per violation; and to authorize the Board of Land and Natural Resources (Board) to assess fines based on damages to natural resources within the Conservation District. The Department of Land and Natural Resources (Department) is for the most part, in support of the House Draft 1, but respectfully requests that this Committee restore its effective date to take effect upon approval.

The State has a public trust obligation and must remain vigilant in its duty to protect Hawaii's natural resources for the benefit of all of its residents and future generations. The Department finds that in recent years, there has been an increase in the intentional violation of and blatant disregard for state natural resource laws and rules. Consequently, the State has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited financial resources, and a shortage of enforcement personnel.

Examples of such behavior include unauthorized commercial activities on public beaches; operation of all-terrain vehicles on unencumbered or other restricted public lands; damage to archeological, historical or geologic features; destruction, defacing or removal of native trees or plants or other natural resources on public lands; damage to stony coral and live rock; the unauthorized grubbing and grading of conservation-zoned lands; construction of unauthorized single family residences or similar major structures within the Conservation District; and the construction of unauthorized seawalls.

In order to bring more severity to this issue, the Department is proposing three pieces of enforcement-legislation, House Bill 3176 (Relating To Administrative Penalties For Damage To Stony Coral And Live Rock), House Bill 3178 (Relating To Civil Penalties For Violations On Public Lands), and this measure House Bill 3177, to deter unlawful behavior by imposing harsher penalties on parties that damage natural resource important to the people of Hawaii.

The Conservation District contains important lands and natural resources essential to preservation of the State's fragile ecosystems and the sustainability of its water supply. The Department has recently experienced a rash of violations involving the unauthorized use of conservation-zoned lands throughout the State. This is likely the result of several misperceptions and socio-economic conditions: (1) That it is cheaper to deal with the consequences of the enforcement process than to deal with the permit process; (2) It appears that many large parcels of conservation-zoned land have recently been purchased by individuals or corporations who either do not care about conservation restrictions or who fail to educate themselves about these restrictions; and (3) As urban and agriculture lands approach build out, there is increased pressure to develop conservation-zoned lands.

Section 183C-7(b), Hawaii Revised Statutes, allows for a maximum penalty of \$2,000 for a single violation. While this may deter some from committing minor Conservation District violations, it is not a sufficient penalty to deter major unauthorized actions such as the construction of major structures and facilities, single-family residences, and the taking and destruction of native trees or plants or other natural resources in the Conservation District without first obtaining permits. In Fiscal Year 2007 for example, the Department initiated over 90 enforcement cases and collected approximately \$60,000 in penalties.

Of particular concern to the Department are actions such as grading in the Conservation District. Under the existing statute, the Department can assess up to \$2,000 for a grading violation, whether 10,000 square feet or 10 acres were graded. The Department has processed a number of cases over the past two years in which the inability to treat these cases differently became an issue.

Lastly, for damage to natural resources, the bill provides the Board with some leeway in determining an appropriate fine by considering the market value of the natural resource damaged or taken, and such factors as the loss of the natural resource to its natural habitat and environment.

Testimony of The Nature Conservancy of Hawai'i  
Supporting H.B. 3177 HD 1 Relating to Penalties for Violations  
within the Conservation District  
Senate Committee on Water and Land  
Wednesday, March 12, 2008, 2:45PM, Room 414

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

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The Nature Conservancy of Hawaii supports H.B. 3177 HD 1 Relating to Penalties for Violations within the Conservation District.

There is widespread agreement amongst a variety of stakeholders that Hawai'i's fragile environment is in need of improved enforcement and prosecution of violations of our State natural resource laws. Specifically identified is the need for:

- Natural resource laws that are complete, clear and enforceable;
- Enhanced personnel and resources for enforcement;
- Consistent and fair enforcement;
- Community awareness and engagement to enhance compliance;
- Adequate investigation, prosecution and penalties for violations;
- Appropriate opportunity for administrative enforcement; and
- Improved understanding and management of cases in the court system.

H.B. 3177 HD 1 addresses several of these needs by assessing penalties that suit the violation, providing sufficient opportunity for effective administrative enforcement, and establishing a penalty levels that serve as a strong deterrent to such violations.

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**Committee on Water and Land  
Hearing  
Wednesday, March 12, 2008, 2:45 p.m.  
Conference Room 414**

**Senator Clayton Hee, Chair**



**Testimony on HB3177, HD1**

Dear Chair Hee and Members of the Committee:

My testimony is in SUPPORT of HB3177, HD1. My name is Lynn McCrory and I am the President of PAHIO Development, Inc. We are a locally owned and operated time share development company on the island of Kauai. I was the Kauai member of the Board of Land & Natural Resources for eight years.

HB3177, HD1 proposes to increase the civil penalty fine amounts for violations on public lands from the existing amount of \$2,000 maximum fine to \$10,000 and \$10,000 per day per violation. This change is needed. Consistently on the Board, we had multiple violations within the conservation district. These were logging in the forest reserves to mud damaging the coral reefs. Providing the Board the option to consider market value of the violation allows for the recapture of the reason violators continue to exist. This is significantly very important where the violation is the result of the sale of natural resources (koa, coral, etc.).

Our resources are to be shared with all the people of our islands, not taken by a few for their personal use. I humbly ask for your consideration for SUPPORT of HB3177, HD1. Mahalo!

Me ke aloha pumehana  
With warm aloha,

PAHIO DEVELOPMENT, INC.

A handwritten signature in black ink, appearing to read "Lynn P. McCrory".

Lynn P. McCrory  
President

**TESTIMONY**  
**HB 3177 HD1**  
**(END)**