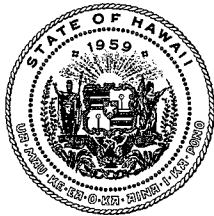
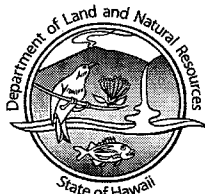


TESTIMONY
HB 3178 HD1

LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
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COMMISSION ON WATER RESOURCE MANAGEMENT

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KEN C. KAWAHARA
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AQUATIC RESOURCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

**On HOUSE BILL 3178 - RELATING TO CIVIL PENALTIES FOR VIOLATIONS
ON PUBLIC LANDS**

**BEFORE THE SENATE COMMITTEE ON
WATER AND LAND**

March 12, 2008

House Bill 3178 is an Administration bill which proposes to increase civil penalty fine amounts for violations on public lands and to clarify penalties for encroachment on public lands. The Department of Land and Natural Resources (Department) strongly supports this measure.

The State has a public trust obligation to protect Hawaii's natural resources for the benefit of all of its residents and future generations. There has been an increase in the intentional violation of and blatant disregard for state natural resources laws. Consequently, the Department has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited 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 3177 (RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT), and this measure, House Bill 3178 (RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS), to deter unlawful behavior by increasing penalties for violations of the State's natural resources laws and rules.

The current maximum \$500 fine for violations on public lands has proven to be an ineffective deterrent to unauthorized activity on public lands and damage, destruction or theft of the State's natural resources. Unauthorized commercial ventures such as surf instruction schools, diving and snorkeling tours, and other ocean recreation related operations can conservatively generate

\$50,000 per month in revenues. Theft and sale of koa trees and other valuable natural resources can produce tens if not hundreds of thousands of dollars in illicit profits for unscrupulous violators. Given such lucrative incentives, violators brazenly disregard the State's natural resource laws since the risk of incurring a maximum fine of \$500, even if compounded with the cumulative daily fines when appropriate, is inconsequential.

The existing statutory remedy for encroachment on public lands requires the violator to restore public land, if altered, to its original condition and assume the costs thereof, but does not require the payment of administrative costs and damages incurred by the Department. Other infractions of Chapter 171, Hawaii Revised Statutes, or any rules adopted thereunder for which violation a penalty is not otherwise provided, require the violator to pay for administrative costs and damages incurred by the Department. This bill corrects that inconsistency by requiring the violator who encroaches on public land to be liable for administrative costs incurred by the Department and for payment of damages.

The bill also provides the Board of Land and Natural Resources with some leeway in determining an appropriate fine for theft and damage to natural resources 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.

This bill provides the Department with more effective tools to enforce violations of our natural resources laws and maximize the impact of the State's limited resources and enforcement personnel. Long term impacts of the bill include the enhancement of public access to public areas such as beaches by the removal of unauthorized operations crowding such areas, and the promotion of public safety by the reduction in unregulated and unsafe activities occurring in public areas.

testimony

From: Makaala Kaaumoana [makaala@hawaiian.net]
Sent: Tuesday, March 11, 2008 10:22 AM
To: testimony
Subject: FW: testimony in support HB3178 WTL 3-12-08 Rm 414 2:45 pm

Please provide the appropriate number of copies to the WTL committee, Mahalo, Makaala

From: Makaala Kaaumoana [mailto:makaala@hawaiian.net]
Sent: Tuesday, March 11, 2008 10:17 AM
To: Senator Hee (senhee@capitol.hawaii.gov); 'senkokubun@capitol.hawaii.gov'; Senator Tokuda (sentokuda@capitol.hawaii.gov)
Cc: 'Sen. Gary Hooser'
Subject: testimony in support HB3178 WTL 3-12-08 Rm 414 2:45 pm

Aloha Chair Hee, Vice Chair Kokubun and honorable members of the WTL committee,

The Hanalei Watershed Hui is in strong support of HB 3178.

We need this legislation to bring some order to the chaos of illegal or unpermitted commercial activities in Hanalei River, Bay and coastal areas.

Until DLNR makes rules for the surf schools and commercial tour boats that impact our community, having stronger penalties for the rules we do have will send a strong signal to those choosing to exploit our public resources for their own profit.

Over the past several years, Hanalei has suffered from the lack of attention to the degradation of the public trust resources by inaction of the State. We have supported several legislative attempts to address this situation with no positive outcome thus far.

In Hanalei, partners of our program, including the State of Hawaii, have invested millions of dollars assessing and mitigating damage to our resources from both point and non point sources. The point source of unregulated commercial activities must be addressed.

We strongly urge you to pass this legislation as a "start" for this process.

Me ka pono, Makaala

Maka'ala Ka'aumoana
Executive Director
Hanalei Watershed Hui
P.O.Box 1285
Hanalei, HI 96714
808-826-1985

The Hanalei Watershed Hui mission is to support and protect the ecology, cultures and sustainable economies of Hanalei.

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

Senator Clayton Hee, Chair



Testimony on HB3178

Dear Chair Hee and Members of the Committee:

My testimony is in SUPPORT of HB3178. 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.

HB3178 proposes to increase the civil penalty fine amounts for violations on public lands from the existing amount of \$500 maximum fine to various levels depending on the violation and the number of violations. This change is needed. Consistently on the Board, we saw multiple violations because the fine amount was so insignificant to the total revenue of an operation. 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 HB3178.
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 3178 HD1
(END)