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

On Senate Bill 3138, Senate Draft 1 – Relating To The Waianae Coast

**BEFORE THE HOUSE COMMITTEE ON
WATER, LAND, OCEAN RESOURCES, AND HAWAIIAN AFFAIRS**

March 17, 2008

Senate Bill 3138, Senate Draft 1 proposes to amend Act 6, Special Session Laws of Hawaii 2005, to require the Department of Land and Natural Resources (Department) to prepare an interim report on the baseline environmental study for the Waianae Coast, Oahu, to be submitted to the 2008 Legislature and final report to the 2009 Legislature. The bill also appropriates an unspecified sum to the Department for continuing preparation of the study. The Department does not feel this bill is necessary as the Department anticipates that the final report will be delivered to the Legislature prior to the 2009 Legislative Session.

The Department notes that it submitted a status report (attached) to the 2008 Legislature in November of 2007. The report gives the status of the environmental baseline study for the Waianae Coast, Oahu, and gives a tentative completion date of April 2008.

REPORT TO THE TWENTY-FOURTH LEGISLATURE
2008 REGULAR SESSION

STATUS ON THE ENVIRONMENTAL BASELINE STUDY OF THE
WAIANAE OCEAN AREA



PREPARED BY THE

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
STATE OF HAWAII

IN RESPONSE TO
ACT 6, SPECIAL SESSION LAWS OF HAWAII 2005

NOVEMBER 2007

STATUS ON THE ENVIRONMENTAL BASELINE STUDY OF THE WAIANAE OCEAN AREA

INTRODUCTION

This status report to the 2008 Legislature is prepared in response to Act 6 of the 2005 Special Legislative Session which asked the Department of Land and Natural Resources (DLNR) to submit a baseline environmental study of the Waianae Coast to the Legislature not later than 20 days prior to the convening of the Regular Session of 2008.

BACKGROUND

Through Act 6 of the 2005 Special Legislative Session (Act 6), the Legislature finds it a matter of concern that along the Waianae Coast, the growing population of West Oahu and the visitor industry are affecting the traditional uses of the area and are having cumulative economic, environmental, social, and cultural effects on the many communities along this coastline. The increased usage of beach parks and state boating facilities to accommodate commercial ocean recreation activities between Kalaeloa and Kaena has had a significant impact on traditional commercial fishing activities, as well as other non-commercial ocean recreational activities.

The Legislature further believes that the ocean waters in this area should be designated by the DLNR as an ocean recreation management area (ORMA) to reduce user conflicts, maintain overall public safety, and to regulate commercial activities by placing limitations on the locations, times, and types of ocean recreation activities that are permitted.

Act 6 placed a moratorium on the issuance of new commercial vessel permits in state small boat harbors involving ocean-related activities for ocean waters between Kalaeloa Point and Kaena Point until the boundaries of a Kalaeloa to Kaena ORMA are designated and administrative rules on recreational boating activities and commercial vessel activities are adopted.

However, the completion of a baseline environmental study is a prerequisite to the establishment of the boundaries of an ORMA and the adoption of the ocean recreation management area rules.

Thus, Act 6 tasked DLNR with the preparation a baseline environmental study as an informational document to be used for the preparation of draft ORMA rules in accordance with procedures set forth in the Act.

The limited financial resources of the State prohibited funding for this baseline environmental study in 2005. Accordingly, the Legislature sought a funding source to ensure that this important baseline environmental study was performed. As a result, Act 314, Session Laws of Hawaii 2006, appropriated \$120,000 to fund the study.

STATUS

DLNR submitted a request for the release of the \$120,000. Simultaneously, pursuant to the Hawaii Public Procurement Code, DLNR's Division of Boating and Ocean Recreation issued a request for proposals (RFP) to conduct a baseline environmental study of the Waianae Coast as required by Act 6.

At the end of 2006, a RFP process was concluded and DLNR chose Environet as the contractor to complete the study. The contract was executed in February 2007.

It came to DLNR's attention in April 2007 that the President of Environet is also the President of Club Kona/Sea Hawaii Incorporated, which holds two mooring permits for commercial boating activities at the Waianae Small Boat Harbor. The Department of the Attorney General was consulted and subsequently ruled that by virtue of the principal of Environet having two mooring permits for commercial boating activities in a harbor that would be part of the study, a breach of the contract's "conflicts of interest" clause had occurred ; thus the contract with Environet had to be cancelled in May 2007.

After cancelling the contract with Environet, DLNR began drafting a new RFP while settling its payment to Environet; as some invoices for the project had already been received. It was determined that the first invoice of \$17,823.60 came with deliverables that were beneficial to DLNR and could possibly be used by the future contractor.

In June 2007, a new contractor was selected,.Tetra Tech EM, Inc.

In July 2007, the Board of Land and Natural Resources approved entering into a contract with Tetra Tech EM, Inc. for a baseline environmental study of the Waianae Coast, Oahu. After negotiations, DLNR executed a contract for \$99,941.00 with Tetra Tech EM, Inc. to complete the scope of work within 6 months. As a condition, if any extensions are needed they must be made in writing to DLNR.

The contract start date was set at October 2, 2007 with an official completion date of April 2, 2008. To date, no extensions have been requested by Tetra Tech EM, Inc. Once the baseline study final is completed, tentatively April 2008, a copy will be transmitted to the Legislature and posted on the DLNR website.

Representative Ken Ito, Chair Committee on Water, Land, Ocean Resources & Hawaiian Affairs
Representative Jon Riki Karamatsu, Vice Chair
Representative Hermina M. Morita, Chair Committee on Energy & Environmental Protection
Representative Mele Carroll, Vice Chair

Monday, March 17, 2008
9:30 a.m., Conference Room 312

In Support of SB 3138 SD 1 Relating to the Waianae Coast

Chair Ito, Chair Morita, and members of the committees:

I am Cynthia K.L. Rezendes, a resident of the Wai`anae Coast, and I am in support of SB 3138 SD1.

In 2005, the State Legislature heard SB 1262 Relating to the Waianae Coast. The original content of the bill requested an environmental impact assessment be done for the purpose of determining the effects of current and future activities on the resources from Ka`ena Point to Kalaeloa considering the increase of user activities and conflicts along the coast. The bill was amended to:

"1) Place a moratorium on the issuance of state small boat harbor permits for ocean use activities until the boundaries of an ocean recreational management area from Kalaeloa Point to Kaena Point are determined and rules are adopted; and

2) Require the Department of Land and Natural Resources to prepare a baseline environmental study to assist in the drafting of ocean recreational management area rules for the aforementioned areas."

The bill was passed in the 2005 Special Legislative Session as Act 6.

In the 2006 Legislative Session the work to be performed was appropriated a budget for \$120,000, far less than the \$1M quoted by then DLNR Director Peter Young. Since then, DLNR did contract with a consultant to do a study based on the stipulations within Act 6. Unfortunately, after initiating the study, it was determined that the consultant awarded the contract, in fact, had a conflict of interest in the results of the study and the initial contract was terminated.

Since then, DLNR did contract with another consultant, for the remaining available sum of \$100,000 and a reduced scope of service, to provide a study to be submitted to DLNR and the Legislature by 2009 (the original date the study was to have been completed by was the start of the 2007 Legislature).

As a community member who has been involved in this process, I believe the new scope of service and the reduced sum available should be supplemented to truly do what the original scope of work was remanded to be so that a comprehensive study is done to provide the proper information for the potential recommendation for an ocean recreation management area that preserves the customary, traditional life-style while allowing side-by-side use of our ocean resources with the increased pressures from the visitor industry and new recreational uses.

Therefore, I urge the committee to support SB 3138 SD1.

Thank you for the opportunity to testify.