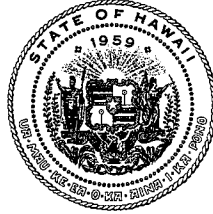
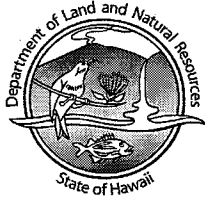


**TESTIMONY**  
**HB 2247**

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
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 2247 – Relating To Historic Preservation**

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

**March 12, 2008**

House Bill 2247 provides for an additional extension of time to acquire lands that are designated to become part of the South Kona Wilderness Area. The wilderness park designation in South Kona includes portions of the coastal areas within the ahupuaas of Honomalino, Okoe, Kaulanamauna, and Manuka, most of which are State-owned. The Department of Land and Natural Resources (Department) notes that the privately owned lands that are the subject of the bill are located in Kapua, which is situated between Kaulanamauna and Manuka. While the Department appreciates the intent of this measure, the Department nonetheless has doubts on whether a land exchange can be consummated.

On May 30, 2007, the Department met with representatives for the Kapua Landowners ("Landowner"). The purpose of this meeting was to identify acceptable public lands for purposes of a land exchange pursuant to Act 59, Session Laws of Hawaii 2003. Following subsequent analysis of Department files, however, the Landowner did not identify any public lands as being acceptable for purposes of a land exchange. Consequently, although the Department supports the designation of the South Kona Wilderness Area, it is unlikely that a land exchange is feasible.



**THE TRUST FOR PUBLIC LAND'S TESTIMONY IN SUPPORT OF  
HB 2247 Relating to Historic Preservation  
Senate Committee on Water Land  
Wednesday, March 12, 2008, 2:45 p.m.  
State Capitol Conference Room 414  
testimony@capitol.hawaii.gov**

Hawai'i Office  
212 Merchant St.  
Suite 320  
Honolulu, HI  
96813  
T. 808-524-8560  
F. 808-524-8565  
www.tpl.org

Dear Chairperson Hee, Vice Chair Kokubun and Committee members:

The Trust for Public Land (TPL) supports HB 2247.

TPL is a non-profit organization dedicated to preserving and protecting land for people, whether those lands are important cultural, recreational, ecological or scenic areas that add to our quality of life here in Hawai'i. TPL has successfully protected over 36,000 acres of our best-loved and most-used places throughout the Islands, including Pūpūkea-Paumalū on the North Shore of O'ahu, Wao Kele o Puna on Hawai'i Island, Lumaha'i Beach on Kaua'i, and Mū'olea Point in Hana on Maui.

TPL supports HB 2247 which would extend the window of opportunity for permanent protection of the culturally and naturally rich landscape contained within the South Kona Wilderness Area. HB 2247 preserves the opportunity for that bill to help secure and protect the historic lands at Kapu'a, an area that has been contemplated for preservation as a wilderness area and cultural preserve since the early 1970's by both the local community and the State Parks system. TPL is currently engaged in discussions with one of the owners of the four parcels, Jeff Stone, about the possible acquisition of Kapu'a, and is hopeful that an acquisition could be completed within the time frames of the extension proposed in HB 2247.

Mahalo for the opportunity to testify.

  
Lea Hong  
Hawaiian Islands Program Director  
The Trust For Public Land



Testimony of The Nature Conservancy of Hawai'i  
Supporting H.B. 2247 Relating to Historic Preservation  
Senate Committee on Water and Land  
Wednesday, March 12, 2008, 2:45PM, Room 414

---

*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 rare and endangered 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 and also work closely with government agencies and private landowners on cooperative land and marine management projects.*

---

The Nature Conservancy of Hawai'i supports H.B. 2247.

The proposed South Kona Wilderness Area will protect important cultural resources as well native dry land forest cover which is becoming increasingly rare throughout the state. The Conservancy looks forward to continuing to work with the State, the landowner, and other interested parties to achieve a successful land acquisition and establishment of this important conservation land area.

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zadoc W. Brown, Jr. Carl A. Carlson, Jr. David C. Cole Samuel A. Cooke  
Peter H. Ehrman Kenton T. Eldridge Guy Fujimura J. Stephen Goodfellow Thomas Gottlieb James J.C. Haynes Ron Higgins Peter Ho  
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Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

**TESTIMONY**

**HB 2247**

**(END)**

**TESTIMONY**  
**HB 2518 HD1**

Emailed to: [testimony@Capitol.hawaii.gov](mailto:testimony@Capitol.hawaii.gov)

Mar. 9, 2008

**Denise Antolini** 59-463 Alapi`o Road Pūpūkea, O`ahu 96712

(808) 638-5594

Senate Water and Land Committee  
Hearing March 12, 2008  
2:45 p.m. Conf. Room 414

Dear Chair Hee, Vice Chair Kokubun, and Members of the Committee:

I write in **strong support of HB2518 HD1**, providing tax credits for land conservation.

The State of Hawaii needs -- **NOW, this session** -- a broader range of land conservation tools to protect the "crown jewels" of our coastal, agricultural, and rural landscape.

For proposed public-private acquisitions, such as the **Galbraith** agricultural lands in Central O`ahu, the **Turtle Bay** property on the North Shore, and the **many other high priority needs around the state**, this new tool of tax credits for willing landowners is critical to add to the toolbox.

The cost to the state is "pennies on the dollar" compared to the benefits, particularly now when the real estate market has slowed down considerably. With appropriate safeguards to ensure proper valuation, this tool can result in considerable long-term savings to taxpayers through avoided costs of development.

**Twelve other states in the country have this kind of tax credit for conservation program** -- Hawaii should proudly become the 13th state to join this effort that brilliantly leverages state and private resources for permanent land conservation.

Mahalo for your support.

Sincerely,

Denise Antolini

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** INCOME, Land conservation incentives tax credit

**BILL NUMBER:** HB 2518, HD-1

**INTRODUCED BY:** House Committee on Finance

**BRIEF SUMMARY:** Adds a new section to HRS chapter 235 to allow an eligible taxpayer who is the owner of land to claim a land conservation incentives tax credit if the taxpayer: (1) donates the land in perpetuity or completes a bargain sale in perpetuity to the state or public or private conservation agency that fulfills a conservation or preservation purpose; provided that any donation or sale that represents a less-than-fee interest qualifies as a charitable contribution deduction under IRC section 170(h); or (2) voluntarily invests in the management of land to protect or enhance a conservation or preservation purpose under a land protection, conservation, or management agreement. Donations of land for open space to fulfill density requirements to obtain subdivision or building permits do not qualify for the credit.

The amount of the tax credit shall be 50% of the fair market value of the land that the eligible taxpayer donates in perpetuity on or after January 1, 2008 for a conservation or preservation purpose to the state or public or private conservation agency; or 50% of the amount invested in the management of land. Limits the credit to \$2.5 million per donation regardless of the value or interest in the land. The credit may be claimed only once per tax year. Delineates procedures for the claiming of the credit by a pass-through entity.

Credits in excess of a taxpayer's income tax liability may be applied to subsequent income tax liability. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year. The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof to claim the credit.

Defines "bargain sale," "conservation or preservation purpose," "cultural property," "eligible taxpayer," "interest in land or real property," "land" and "public or private conservation agency" for purposes of the measure.

**EFFECTIVE DATE:** January 1, 2020; applicable to tax years beginning after December 31, 2007

**STAFF COMMENTS:** This measure proposes an incentive in the form of an income tax credit to encourage a landowner to donate, complete a bargain sale to the state or a conservation agency, or voluntarily invest in the management of land to protect or enhance a conservation or preservation purpose.

While the credit may be intended as an incentive, it lacks accountability. In considering this measure, lawmakers should ask themselves just how much will this program cost the state treasury? If this program required an appropriation, how much would lawmakers be willing to appropriate for this program? The financial impact of the proposed credit is no different from the expenditure of public



dollars albeit out the back door and hidden from public scrutiny.

Tax credits generally are designed to mitigate the tax burden of those individuals or businesses that do not have the ability to pay their share of the tax burden. These credits are justified on the basis that low-income taxpayers should be relieved of the burden imposed by taxes which are not based on the income of the taxpayer, such as the general excise tax. The proposed credit contained in this measure bears no relationship to the tax burden of the landowner. Thus, the credit amounts to nothing more than a subsidy by state government. Such subsidies are more accountable if funded with a direct appropriation of state funds.

Digested 3/10/08



**THE TRUST FOR PUBLIC LAND'S TESTIMONY IN SUPPORT  
HB 2518**

**Senate Committee on Water and Land  
Wednesday, March 12, 2008, 2:45 p.m., Room 414  
testimony@capitol.hawaii.gov**

Dear Chairperson Hee and Vice Chair Kokubun:

Hawaii Office  
212 Merchant St.  
Suite 320  
Honolulu, HI  
96813  
T: 808-524-8560  
F: 808-524-8565  
www.tpl.org

The Trust for Public Land (TPL) supports HB 2518 Relating to Land Conservation.

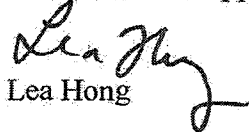
As development and urban sprawl increase, concern about the future of land use and its relation to Hawai'i's natural resources, economy and heritage have come to the forefront of community concern. Some of these concerns are protected and embodied in recent laws providing funding for the acquisition of private lands for public conservation purposes. The recent State Legacy Lands Act is but one example.

Funding from programs such as the Legacy Lands Conservation Program yield great benefits to the people of Hawai'i, but further incentives are necessary to provide alternatives to the tremendous financial pressures to convert needed agricultural or conservation land to other uses that generate greater revenue. It is also impossible for the government to acquire and take care of all of these lands.

H.B. 2518 provides a voluntary incentive for private landowners to protect our precious lands and offers an alternative to acquisition and government management. It advances conservation by creating a competitive class of land use in an economy where conversion by private landowners to other uses are an attractive or economic necessity.

We urge you to support HB 2518.

Mahalo for this opportunity to testify,

  
Lea Hong





MAUI LAND & PINEAPPLE COMPANY, INC.

---

March 10, 2008

The Honorable Senator Clayton Hee, Chair  
The Honorable Senator Russell S. Kokubun, Vice Chair  
Committee on Water and Land  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 414  
Honolulu, Hawaii 96813

Subject: H.B. 2518, HD1 – Relating to Land Conservation

Dear Honorable Chair Hee, Honorable Vice Chair Kokubun and Committee Members:

Maui Land & Pineapple Company, Inc. (“ML&P”) strongly supports H.B. 2518, HD1 Relating to Land Conservation.

More than half of ML&P’s land on West Maui is zoned conservation by the State of Hawaii. These lands are part of the West Maui Mountains Watershed Partnership and consist of important watershed lands which provide about 70% of the potable water source for the entire population of the island of Maui. Undeveloped private lands often provide significant benefits and services to the general public such as watersheds, erosion control, carbon sequestration, green space, recreational opportunities, and cultural preservation. However, landowners do not presently receive any remuneration for the ecosystem services their lands provide. While the public depends upon the provision of these services, society often treats them as essentially free.

For many private landowners, there is significant pressure to convert forests, ranch and agricultural lands, open spaces, and lands with historical or cultural features to uses that generate greater income to the landowner. However, such conversions often result in lost opportunity for future generations to enjoy precious land areas in the way that their parents and grandparents enjoyed them. To be attractive to landowners, conservation must be competitive with other existing or potential uses of the land – a goal that H.B. 2518, HD1 helps advance.

Like the Legacy Lands Act approved by the Legislature in 2005, H.B. 2518, HD1 can help provide opportunities and additional choices for land conservation in Hawaii. A mix of existing government and private funding for conservation land purchases, as well as tax incentives like those in H.B. 2518, HD1 can enable landowners a variety of options to suit their needs as well as help government to achieve a public benefit.

The Honorable Senator Clayton Hee, Chair  
The Honorable Senator Russell S. Kokubun, Vice Chair  
March 10, 2008  
Page - 2 -

The tax incentives proposed in H.B. 2518, HD1 will be another tool like the Legacy Lands Act for government and private partners to achieve the important public policy goal of protecting and managing some of the islands' treasured natural areas, agricultural lands, open spaces, and historical sites. Indeed, tax incentives that allow landowners to retain ownership while committing to protection can help achieve public conservation priorities without requiring the government to expend many millions more to buy and manage the land itself.

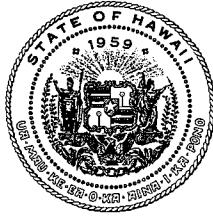
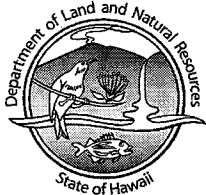
We sincerely appreciate the opportunity to provide our testimony. If you have any questions or wish to discuss our testimony, please do not hesitate to contact me at (808) 877-3882.

Mahalo,

A handwritten signature in black ink, appearing to read "Warren A. Suzuki". The signature is fluid and cursive, with the first name "Warren" being the most prominent.

Warren A. Suzuki  
Senior Vice President

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

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 2518, House Draft 1 – RELATING TO LAND CONSERVATION

BEFORE THE SENATE COMMITTEE ON  
WATER AND LAND

March 12, 2008

House Bill 2518, House Draft 1 provides a land conservation incentive tax credit to encourage the preservation and protection of land in the State. While the Department of Land and Natural Resources (Department) acknowledges the intent of this measure to provide incentives for landowners to preserve and protect their important *mauka* lands, the Department nonetheless defers to the Department of Taxation on any tax implications and effects the bill would have on their operations.

Over half of the lands in Hawai'i are privately owned and *mauka* lands, including intact forests, open woodlands, and pasture lands, and provide a significant amount of "ecosystem services," that support all of Hawaii's residents and visitors. These services include the delivery of clean drinking water, carbon sequestration that stabilizes the climate, cultural practices, opportunities for recreation, and many others. These lands also play a critical role in supporting Hawaii's unique native plants and animals. It is essential to provide solid stewardship incentives for private landowners to care for *mauka* lands that are critical in ecosystem service production.

The Department participated in a working group formed in response to House Concurrent Resolution 200, 2006 Legislative Session, to conduct an analysis of local, national, and international incentive programs that promote landowner protection of important *mauka* lands and recognize the public benefits of the ecosystem services provided by those lands. The establishment of state tax credits for donated conservation easements and landowner-funded activities that promote conservation on private lands was one of the key recommendations in the working group report (<http://hawaii.gov/dlnr/reports/2008/division-of-forestry-wildlife/FW08-Important-Mauka-Lands-Report.pdf>).

Promoting conservation easements is a valuable conservation tool. Conservation easements are restrictions placed on land to enhance conservation values. They are either voluntarily sold or donated by a landowner. The Legacy Land Conservation Program (LLCP), Chapter 173A, Hawaii Revised Statutes, provides State funding for the acquisition of conservation easements on lands having value as a resource to the State. This measure would provide tax credits for landowners that donate or make a bargain sale of land or conservation easements or voluntarily

invest in conservation management. These credits would be added to federal tax benefits for these actions. The combination of existing Federal tax benefits and proposed state tax credits will likely provide an immediate stimulation to expanded conservation actions and promote delivery of ecosystem services on *mauka* lands throughout the State with its public benefits.

The Department is aware of the Department of Taxation's concerns with certifying what donations of land or investments in management of land qualify for the tax credit. The Department is the appropriate agency to certify donations or management actions for natural and cultural resources and the Department of Agriculture would be the appropriate agency for agricultural easements or management. The Department is willing to work with the Department of Taxation on how best to implement such a process and identify ways to streamline the process and book-keeping and reporting requirements.

The Department notes that the Senate version, Senate Bill 2198, Senate Draft 2 amended the measure to require that the State agency work with the taxpayer to identify opportunities for public access if appropriate and reasonable. The Department supports this approach because it allows flexibility in dealing with public access to the lands qualifying for the tax credit. Requiring public access to all potential lands will be a disincentive for some landowners to participate. While appropriate for some lands such as beach or recreational access, open public access may not be appropriate for other lands such as cultural and historic properties, and working farms or ranches that have legitimate concerns about vandalism, resource theft, and liability. The taxpayer should be required to provide access to the public or private conservation agency holding the conservation easement to monitoring the status of the conservation easement or to verify that conservation management actions have been implemented on the property. Public access should be encouraged and required where appropriate to fulfill the purpose of the easement, but not be required in cases where it would jeopardize or degrade resources intended for protection or create an undue hardship or liability for the landowner.



## **Hawaii Agriculture Research Center**

99-193 Aiea Heights Drive, Suite 300

Aiea, Hawaii 96701

Ph: 808-487-5561/Fax: 808-486-5020

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

**HB 2518 HD1**

**RELATING TO LAND CONSERVATION**

**March 12, 2008**

Chairman Hee and Members of the Committee:

My name is Stephanie Whalen. I am President and Research Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center, our research and support staff, and our members and clients.

**HARC strongly supports HB 2518 HD1 Relating to Land Conservation.**

In order to preserve some of the lands of Hawaii incentives are important. Because of the unique land holding situation in Hawaii many land owners do not qualify for the federal tax credits provided to those helping to preserve lands for the purposes proposed in this measure. Although there has been efforts to make an exception specifically for Hawaii to allow our land owners to receive these federal tax credits, those efforts have not been successful.

It is in the public interest of this state to provide those tax credits to ensure some lands for unique or special use are preserved in perpetuity.

Thank you for this opportunity to provide **SUPPORT** for **HB 2518 HD1**, preserving land in Hawaii for the public interest.

**testimony**

---

**From:** kolea1@aol.com  
**Sent:** Monday, March 10, 2008 10:12 PM  
**To:** testimony  
**Subject:** HB2518

I support HB 2518 relating to land conservation to be submitted by the  
Committee on Water and Land  
on

**DATE:** Wednesday, March 12, 2008  
**TIME:** 2:45 p.m.  
**PLACE:** Conference Room 414  
State Capitol  
415 South Beretania Street

Mahalo for your consideration of my testimony.

Barbara Arnold  
Honolulu, HI

---

Supercharge your AIM. Get the [AIM toolbar](#) for your browser.



**testimony**

---

**From:** sara ackerman [stellabuttercup@gmail.com]  
**Sent:** Monday, March 10, 2008 8:56 PM  
**To:** testimony  
**Subject:** House Bill 2518 HD1

I support this bill - House Bill 2518 HD1!

Sara Ackerman  
59-520 Hoalike road  
Haleiwa, HI 96712

--

con amor, Sara

**testimony**

---

**From:** charlotte [kczmurphy@hawaii.rr.com]

**Sent:** Tuesday, March 11, 2008 8:45 AM

**To:** testimony

**Subject:** Committee on water and land: Wednesday March 12,2008 HB2518,HD1

Dear Chair *Hee* and Committee members,

HB 2518 provides a voluntary incentive for private landowners to protect our precious lands and offers an alternative to acquisition and government management. It advances conservation by creating a competitive class of land use in an economy where conversion by private landowners to other uses are an attractive or economic necessity. We urge you to support HB 2518. Concerned residents of Hawaii and the North shore, Oahu  
Kevin, Charlotte and Zack Murphy

## testimony

---

**From:** steven@stevensquire.com  
**Sent:** Tuesday, March 11, 2008 8:31 AM  
**To:** testimony  
**Subject:** House Bill 2518 HD1

I support the House Bill 2518 HD1 providing tax credits to landowners that put their land into conservation.

Thank you for the opportunity to provide testimony,

-Steven Squire

**testimony**

---

**From:** Everett Magnuson [emagnuson@earthlink.net]  
**Sent:** Tuesday, March 11, 2008 8:21 AM  
**To:** testimony  
**Subject:** HB 2518, HD1

I am emailing in support of HB 2518, HD1

Sincerely,

Everett Magnuson  
57-086 Eleku Kuilima Place  
Kahuku, HI 96731

**testimony**

**From:** Ann [kaneboy@hawaii.rr.com]  
**Sent:** Tuesday, March 11, 2008 8:51 AM  
**To:** testimony  
**Subject:** Testimony House Bill 2518 HD1

COMMITTEE ON WATER AND LAND  
 Senator Clayton Hee, Chair  
 Senator Russell S. Kokubun, Vice Chair

NOTICE OF HEARING

**DATE:** Wednesday, March 12, 2008  
**TIME:** 2:45 p.m.  
**PLACE:** Conference Room 414

State Capitol

415 South Beretania Street

Dear Chair Ito and Committee Members:

The Trust for Public Land (TPL) supports HB 2518 Relating to Land Conservation. TPL conserves land for people to enjoy as parks, gardens and other natural places, ensuring livable communities for generations to come. Nationwide, TPL has five program initiatives: (1) providing parks for people, (2) protecting working lands (farms, ranches, and forests), (3) conserving natural lands (wilderness, wildlife habitat), (4) safeguarding heritage lands (cultural and historical resources), and (5) preserving land to ensure clean drinking water and the natural beauty of our coasts and waterways. In Hawaii, TPL has worked with public and private partners to conserve over 36,000 acres of land in the State, including Waimea Valley on O'ahu, Lumahai Beach on Kaua'i, Wao Kele O Puna on the Big Island, Mu'olea Point in Hana on Maui, and portions of Hi'ilawa Valley on Moloka'i.

As development and urban sprawl increase, concern about the future of land use and its relation to Hawaii's natural resources, economy and heritage have come to the forefront of community concern. Some of these concerns are protected and embodied in recent laws providing funding for the acquisition of private lands for public conservation purposes. The recent State Legacy Lands Act is but one example. Funding from programs such as the Legacy Lands Conservation Program yield great benefits to the people of Hawaii, but further incentives are necessary to provide alternatives to the tremendous financial pressures to convert needed agricultural or conservation land to other uses that generate greater revenue. It is also impossible for the government to acquire and take care of all of these lands.

HB 2518 provides a voluntary incentive for private landowners to protect our precious lands and offers an alternative to acquisition and government management. It advances conservation by creating a competitive class of land use in an economy where conversion by private landowners to other uses are

an attractive or economic necessity. I urge you to support HB 2518.

Ann Drechsler  
59-322 Alapio Road  
Haleiwa Town, Hawaii 96712-9605  
638-9027  
[kaneboy@hawaii.rr.com](mailto:kaneboy@hawaii.rr.com)

**testimony**

---

**From:** annetakinn@aol.com

**Sent:** Tuesday, March 11, 2008 9:32 AM

**To:** testimony

**Subject:** Testimony for HB2518 Hearing March 12,2009, 2:45 pm Conference Rm, 414

Dear Senator Hee,  
I strongly support HB2518 relating to Land Conservation to provide tax credit to encourage the preservation and protection of conservation land in the state of Hawaii.

Annetta Kinnicutt  
341 Iliaina St.  
Kailua, Hi 96734

---

Supercharge your AIM. Get the [AIM toolbar](#) for your browser.

**testimony**

---

**From:** Toni Sickler [sicklert003@hawaii.rr.com]  
**Sent:** Tuesday, March 11, 2008 9:44 AM  
**To:** testimony  
**Subject:** Bill HB 2518, HD1 Committee on Water and Land March 12 2:45m Conference Room 414

COMMITTEE ON WATER AND LAND  
Senator Clayton Hee, Chair  
Senator Russell S. Kokubun, Vice Chair

NOTICE OF HEARING  
DATE: Wednesday, March 12, 2008  
TIME: 2:45 p.m.  
PLACE: Conference Room 414

**HB 2518, HD1  
(HSCR1007-08)  
RELATING TO LAND CONSERVATION.  
Provides a tax credit to encourage the preservation and protection of conservation land in the state. (HB2518 HD1)**

**Dear Chair Ito and Committee Members:**

**I am unable to attend March 12<sup>th</sup> hearing but I wish my voice to be heard. I overwhelming support HB 2518, HD1. We have so few opportunities to secure open land for the public use and this bill will help to address this situation.**

**Our community has demonstrated overwhelming support in preserving open space and protecting such lands from development.**

**Please pass this bill. It will be a further step to provide a method of funding to preserve and protect. With creative thinking, saving open space is a real possibility that I wholly support.**

**Thank you for your time and consideration.**

**Aloha,  
Toni Sickler  
59-415 Makana Road  
Haleiwa, Hi 96712**

**Phone: 808-638-8497**



Testimony of The Nature Conservancy of Hawai'i  
Supporting H.B. 2518, HD1 Relating to Land Conservation  
Senate Committee on Water and Land  
Wednesday, March 12, 2008, 2:45PM, Room 414

---

*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, Moloka'i, Lāna'i, Hawai'i and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

---

The Nature Conservancy of Hawai'i supports H.B. 2518, HD1 Relating to Land Conservation.

Undeveloped private lands often provide significant benefits and services to the general public such as watersheds, erosion control, carbon sequestration, green space, recreational opportunities, and cultural preservation. However, landowners do not presently receive any remuneration for the ecosystem services their lands provide. While the public depends upon the provision of these services, society often treats them as essentially free.

For many private landowners, there is significant pressure to convert forests, ranch and agricultural lands, open spaces, and lands with historical or cultural features to uses that generate greater income to the landowner. A mix of existing government and private funding for conservation land purchases, as well tax incentives like those in this bill can enable landowners a variety of options to avoid conversion and help government achieve a public benefit. Indeed, tax incentives that allow landowners to retain ownership while committing to protection can help achieve public conservation priorities without requiring the government to expend many millions more to buy and manage the land itself.

**Should the Committee consider replacing the text of this bill with the text from the Senate version (S.B. 2198, SD2), we ask that you consider lengthening or, preferably, eliminating the 2012 sunset date in Section 5 in favor of a reporting requirement by the relevant state agencies.**

The sunset provision in S.B. 2198, SD2 does not give land owners much time to become educated and to take advantage of the tax credits. In other states, it took at least three years before even a nominal number of land owners completed the process. In many cases, landowners will want to test the water with a small donation and follow up a few years later with a more meaningful donation.

California adopted a 10-year sunset, prior to which they could assess the effectiveness of their legislation. For many other states, rather than adopting a sunset provision, they implemented a reporting requirement to gather data about the use of the tax credits. After collecting data, many states increased the tax credit available and how long it could be carried forward. **States have found that the tax credits were useful money savers in their quest to protect scarce resources.** The longer the programs have been underway, the trend has been to create more generous incentives to inspire more landowners to donate.

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zadoc W. Brown, Jr. Carl A. Carlson, Jr. David C. Cole Samuel A. Cooke  
Peter H. Ehrman Kenton T. Eldridge Guy Fujimura J. Stephen Goodfellow Thomas Gottlieb James J.C. Haynes Ron Higgins Peter Ho  
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Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

**testimony**

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**From:** Elizabeth Dunne [elizabethdunne@hotmail.com]  
**Sent:** Tuesday, March 11, 2008 11:12 AM  
**To:** testimony  
**Subject:** Testimony in Support of HB 2518

**Testimony in Support of HB 2518 – Relating to Land Conservation**

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

Dear Chair Hee, Vice Chair Kokubun, and Committee Members:

I strongly support HB 2518 relating to land conservation. Land conservation is essential to preserve the character of the islands, to maintain a high quality of life, and to promote sustainability.

Because over half of the lands in Hawai'i are privately owned, laws encouraging private landowners to preserve land for public benefit play a critical role in shaping the future landscape of our islands. State tax credits for land conservation provide a financial incentive for private landowners to voluntarily protect precious land in the face of development pressures.

I urge you to support HB 2518.

Sincerely,

Elizabeth M. Dunne  
Honolulu, Hawaii 96815  
[elizabethdunne@hotmail.com](mailto:elizabethdunne@hotmail.com)

**testimony**

---

**From:** Bruce Bila [bbila@sbcglobal.net]  
**Sent:** Tuesday, March 11, 2008 9:51 AM  
**To:** testimony  
**Subject:** HB2518HD1

We are in support of HB2518HD1 giving tax credits to landowners that will work with the State to help conserve our lands for future generations. Mahalo Bruce & Patricia Bila

**testimony**

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**From:** Louie DelleFave [delletec@austin.rr.com]  
**Sent:** Tuesday, March 11, 2008 2:31 PM  
**To:** testimony  
**Subject:** Testimony for HB2518

Aloha Senators,

On behalf of the Koolauloa / North Shore Alliance, I am asking for your kokua in accepting **my support** of HB2518 HD1: land conservation tax credits. This is a Senate hearing of the Twenty-Forth Legislature, Regular Session of 2008.

COMMITTEE ON WATER AND

Senator Clayton Hee, Chair

Senator Russell S. Kokubun,  
Vice Chair

LAND

**DATE:** Wednesday, March 12, 2008  
**TIME:** 2:45 p.m.  
**PLACE** Conference Room 414  
State Capitol  
415 South Beretania Street

This will add another tool to the important toolbox of approaches the State can use to put together a creative purchase package for the Kuilima Resort and Oaktree Capital lands. This bill also helps our friends in other communities statewide who are similarly fighting for important rural and open space.

This is so extremely important to keep the open country-side that we have left! This is not only for all who live in Hawaii, but for all of the visitors who come to see the beauty and open spaces that go with the openness. To further develop the Kuilima Resort, would destroy the natural beauty of the North Shore! I appeal your good judgment to help save our last natural area!

Mahalo,  
Cynthia DelleFave  
[delletec@mac.rr.com](mailto:delletec@mac.rr.com)

LINDA LINGLE  
Governor



SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WATER AND LAND  
WEDNESDAY, MARCH 12, 2008  
2:45 p.m.  
Room 414

HOUSE BILL 2518, HOUSE DRAFT 1  
RELATING TO LAND CONSERVATION

Chair Hee, Vice-Chair Kokubun and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2518, House Draft 1 that seeks to establish a tax credit to encourage the preservation and protection of certain donated or "bargain sale" lands in the State at less than fair market value, and in perpetuity. The Department of Agriculture supports the intent of this measure; however, we have concerns about the possible adverse budgetary impact that this bill may have on the Executive Supplemental Budget request and offers three amendments that could help to protect more agricultural lands. We defer to the Department of Taxation regarding the tax credit and its implications on the State budget.

We recommend three amendments that will help to protect significant agricultural lands as declared by the Department of Agriculture, or designated as important agricultural lands and offer land owners of these designated lands access to incentives for important agricultural lands that will be developed and enacted by the legislature, provided they do not conflict with the provisions of this new section. The first amendment inserts the following new language on page 2, line 3:

(note: new language is double underscored and bold print)

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§235- Land conservation incentives tax credit; definitions. (a) As used in this section:

"Bargain sale" means a sale where a taxpayer is paid less than the fair market value for land or an interest in land.

"Conservation or preservation purpose" means:

- (1) Protection of open space for scenic values;
- (2) Protection of natural areas for wildlife habitat, biological diversity, or native forest cover; or
- (3) Preservation of forest land, agricultural land, watersheds, streams, rainfall infiltration areas, outdoor recreation areas, including hiking, biking, and walking trails, and historic or cultural property;

provided that the resources or areas protected or preserved are designated as significant or important by a relevant state agency and that the state agency work with the taxpayer to identify opportunities for public access if appropriate and reasonable[-]; provided further that the agricultural land has been declared as significant agricultural land by the department of agriculture, or designated as important agricultural land pursuant to chapter 205, part III. "

The second amendment is a definition to be inserted on page 3, after line 11:

"Significant agricultural land" means agricultural lands that possess at least five of the eight criteria used to identify important agricultural lands in section 205-44. "

The third amendment adds a new section to the bill, amending Section 205-45 (petition for landowner or farmer) to include similar language.

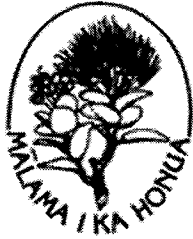
SECTION . Section 205-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A farmer or landowner with lands qualifying under section 205-44 may file a petition for declaratory ruling with the commission at any time in the designation process. The holder of an interest in agricultural lands that qualifies for the land conservation incentives tax credit under section 235- may petition the commission for designation of the agricultural lands as important agricultural lands, and, upon designation, enjoy the incentives for important agricultural lands provided under section 205-46."

**TESTIMONY**  
**HB 2518 HD1**  
**(END)**



**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.

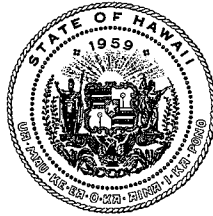
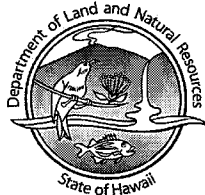
Penalties for violations in Hawaii's most environmentally-sensitive lands—the conservation district—should not simply be part of 'the cost of doing business.' Strong, meaningful penalties are necessary to punish offenders and send a signal to potential offenders of the consequences of their actions. 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

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**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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Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

**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.

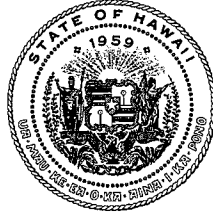
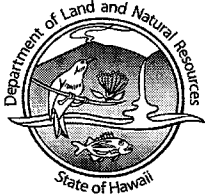
Lynn P. McCrory  
President

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

**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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HISTORIC PRESERVATION  
KABOOLAWA 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

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**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", written in a cursive style.

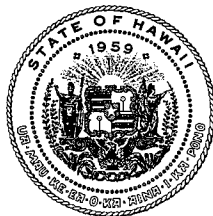
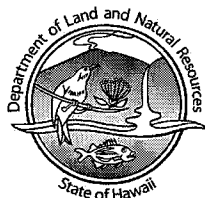
Lynn P. McCrory  
President

**TESTIMONY**  
**HB 3178 HD1**  
**(END)**

**TESTIMONY**

**HB 2872**

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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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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

**on House Bill 2872 – Relating To Public Lands**

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

**March 12, 2008**

House Bill 2872 would require the Department of Land and Natural Resources (Department) to enter into five-year leases with the current leaseholders of recreation-residences at Kōke'e and Waimea Canyon State Parks, Kaua'i. These leases expired on December 31, 2006 and current lessees are on month-to-month revocable permits until a public auction, authorized by the Board of Land and Natural Resources (Land Board), is conducted for the long-term disposition of these leases. Under the proposed measure, the five-year leases would be issued at an unspecified per cent increase over the current rate. The Department opposes House Bill 2872 because a five-year delay in finalizing these lease dispositions is unnecessary and is likely to prolong, if not exacerbate, the problems this measure intends to address. The Department is also concerned with the constitutionality of this "special legislation". As such, the Department would defer to the Department of the Attorney General on the legality of this measure.

The primary reason given for the proposed five-year leases is concern over the condition of the recreation-residences, many of which are historic properties and contribute to the historic character of these two state parks. Lessees are tending to defer the sometimes costly repair and maintenance actions needed to maintain the recreation-residences because their tenancy is uncertain. They do not know when their current permits may be revoked or if they will prevail at public auction.

This measure is unnecessary for several reasons. The Department intends to hold the auction for twenty year leases authorized by the Land Board within the year. This will end the period of uncertainty and limit the duration of delayed repair and maintenance actions. In many cases, a five-year period would not be sufficient anyway to justify the level of investment needed make some of the major, pending repairs. Delaying the auction for five years could actually prolong the deferral of repairs and the structures could fall into even greater disrepair.



## TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2872, RELATING TO PUBLIC LANDS.

**BEFORE THE:**

SENATE COMMITTEE ON WATER AND LAND

**DATE:** Wednesday, March 12, 2008      **TIME:** 2:45 PM  
**LOCATION:** State Capitol Room 414

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or William J. Wynchhoff, Deputy Attorney General

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Chair Hee and Members of the Committee:

The Department of Attorney General opposes this bill and believes it would be unconstitutional if enacted.

This bill requires the Department of Land and Natural Resources to "extend" for five years recreational-residential leases of property in Koke'e and Waimea State Parks on Kauai.

Background

The State owns lots in Koke'e State Park and Waimea State Park. More than 100 of these lots are subject to recreational-residential cabin leases. All of these leases expired on December 31, 2006.

The situation at Koke'e dates back to the early twentieth century. Beginning in the early 1900s, before creation of the state parks, the Territory and the County of Kauai issued permits authorizing use of the lots. See Board of Land and Natural Resources ("BLNR") report to Senate dated March 10, 1965. Permittees constructed recreational cabins at various times over the years. In 1965, the Legislature passed Act 239, section 38, 1965 Hawaii Session Laws 412 (now codified as section 171-44, Hawaii Revised Statutes), allowing the BLNR to issue twenty-year leases in such areas by direct negotiation.



When those leases expired in 1985, the BLNR declined to issue new leases by direct negotiation. Instead it auctioned new twenty-year leases. At that time, due to ambiguity in the 1965 leases, the successful bidders were required to purchase the site improvements from existing lessees. This requirement decreased the auction price.

All of the permits issued over the years and all of the 1965 and 1985 leases: (1) required the permittees and lessees to build and maintain a "cabin" on the property and (2) provided that if the permittees and lessees did not remove any improvements or structures (including the cabin) at the end of the permit, then the State, Territory, or County would own the improvements and structures.

This agreement that the State owned the cabins if not removed reflected the common law of the State of Hawaii. As the Hawaii Supreme Court explained in Anthony v. Kualoa Ranch, Inc., 69 Haw. 112, 119, 736 P.2d 55, 60 (1987):

The law of Hawaii in 1953, when the lease was executed, was that a house built upon premises owned by another became a fixture and part of the realty (*Ahoi v. Pacheco*, 22 Haw. 257 (1914)), and a tenant's right to remove such a house if provided for in the lease, had to be exercised in accordance with the terms of the lease. *Akiona v. Kohala Sugar Co.*, 5 Haw. 359 (1885). The lease in question, when executed, provided exactly what the law of Hawaii, as pronounced by this court, recognized.

Despite this history, law, and the plain meaning of the leases, some (but not all) of the lessees filed lawsuits claiming that the State was "taking" the cabins and was required to pay "just compensation." One of these lawsuits has already gone to trial. In Civil No. 06-1-0049 (Fifth Circuit), the

Honorable Kathleen Watanabe wholly rejected lessees' claims and ruled the leases mean what they say.

The State intends to proceed with issuing new leases in the relatively near future. Consideration is being given to restricting disposition of some or all of the new leases to residents of Kauai. In the meantime, most of the cabins are occupied by the former lessees by way of revocable permit issued pursuant to section 171-55, Hawaii Revised Statutes. Each of the permittees agreed to:

At Permittee's own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted, including free from termite infestation.

#### Problems with the bill

First, the stated purpose of the bill is to provide "lessees" with the "long-term assurance that they need to invest in maintenance and repair of the properties." But each permittee has already agreed to maintain and repair the cabins. The State has no reason to believe they will not honor that agreement. As to any permittee who does not, we believe the appropriate remedy is to terminate the permit and, perhaps, re-issue to someone who will honor contractual obligations.

To the extent the bill is addressing major repairs or major changes, five years is likely too short a period to encourage any major investment. Moreover, we expect that new, twenty-year leases will be issued in the relatively near future. The new lessees will have a greater incentive to upgrade the cabins.

Second, the end of each of the preceding leases has involved litigation. We do not believe it would be in the best interests of the State to "extend" leases with existing

permittees. Doing so will simply postpone final resolution of the disputed issues.

Third, the existing leases have already expired. It is, therefore, not possible to "extend" the now expired leases.

Fourth, to the extent the bill is modified to require new leases to former tenants, it would run afoul of article XI, section 5 of the Hawaii Constitution, which provides:

The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.

No Hawaii case deals with article XI, section 5. One formal opinion from this department addresses it. In our Opinion No. 61-38, at page 2 (footnote omitted), we said:

[I]t is clear that once land was "owned by the State or under its control," the framers of the Constitution intended that it be distributed by means of general laws and to prohibit its dissipation "through private, or special laws". (Vol. 1, Proceedings of the Constitutional Convention of Hawaii, pp. 233, 336.)

The impetus for adoption of article XI, section 5 appears to have been "special land exchange deals or things of that nature which as we know in the past have definitely caused a considerable loss to the Territory." 2 Proceedings of the Constitutional Convention of Hawaii of 1950, at 631 (1961). The committee report refers to "dissipation of assets by land exchanges under private laws or by homestead laws governing a particular tract of land." Stand. Comm. Rep. No. 78, 1 Proceedings of the Constitutional Convention of Hawaii of 1950, at 233 (1960). Although land exchange deals and homestead laws

governing particular tracts of land appear to have been foremost in the minds of the delegates to the 1950 Constitutional Convention, the constitutional proposal they agreed to was not limited to those transactions. The committee report instead states "in administering and disposing of the natural resources the legislature must do so by general law." Id.

Intergovernmental transfers were the only exceptions provided.

Id.

H.B. No. 2872 is (plainly) the product of the exercise of legislative power and involves land owned by the State. The bill does not fall within the exception clause of article XI, section 5, because it does not involve an intergovernmental transfer.

H.B. No. 2872 is not a general law because the bill singles out one parcel of land in a specific locale. It is an exercise of legislative power over the lands owned by the State by special, not general, law and is, therefore, unconstitutional. Note, by way of contrast, the care taken by the 1965 legislature to cast Act 239, 1965 Hawaii Session Laws 412, in general terms.

The Department of Attorney General requests that this bill be held.

**testimony**

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**From:** Keone Kealoha [keone@malamakauai.org]  
**Sent:** Tuesday, March 11, 2008 3:16 AM  
**To:** testimony  
**Subject:** HB2872 - WTL Committee, 3/12, 2:45 PM

**Testimony of Executive Director of Malama Kaua'i  
Twenty-Fourth Legislature, 2008**

**In relation to:**  
HB 2872, Relating to Public Lands

**Before the:**  
House Committee on Water and Land  
State Capitol, 415 South Beretania Street, Conference Room 414

**Dated:**  
March 12, 2008, 2:45 PM

Chair Hee, Vice-Chair Kokubun and Members of the Committee:

**I support this bill.**

The DLNR is currently in the process of finalizing a master plan for Koke'e State Park. It would be premature to allow the DLNR to enact 20-year lease auctions prior to the final master plan being completed. Part of the master planning process included a public testimony component and those comments will be considered by the consultancy preparing the plan.

It is also uncertain as to whether the proposed auction would even be necessary since the master plan may identify other means by which the DLNR can adequately fund the park's management and related DLNR requirements.

Additionally, the master plan may offer alternative auction recommendations not considered by the DLNR prior to the consultant's work being completed.

Please support this bill by allowing a period in which the master plan will be completed and the public comments will have been considered, especially as they relate to the leasehold properties in the park.

For the record, I am not a leaseholder of any property or dwelling located in Koke'e.

Mahalo,  
Keone Kealoha, Executive Director  
Malama Kaua'i

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**Keone Kealoha**  
Director

**Malama Kaua'i**

3/11/2008

## testimony

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**From:** James Torio [jktorio@hawaiiink.net]  
**Sent:** Tuesday, March 11, 2008 7:49 AM  
**To:** testimony  
**Subject:** HB 2872

Aloha Honorable Legislators:

I am respectfully submitting my support "in favor" of HB 2872. Given the nature of how the DLNR have treated Kauai crown jewel, they in fact turned our beautiful mountainscape into a large garden of weeds.

One need only to ride the back roads to see how deplorable the area had become. In the early years I joined with the community to halt efforts by the DLNR under then Peter Young who inspired to change Kokee into a mecca for gaining wealth over the wish of the people. The fact that DLNR have not listened nor worked closer with leaders of the community which was a bad step in the wrong direction.

Kauai island residents are well aware of the DLNR intentions to forge ahead with their development plans regardless how our community feel. Here locally our residence feel they have been betrayed and lied too many times and the "trust factor" is diminished. We have a poor representative in Ron Agor as Kauai Representative for the Land Use Commission, a person who has demonstrated "no guts" on any issue that beface the Commission as it involves Kauai and again this is a sad thing.

Supporting and extension for 5-years may not be the fair thing to do given the rules states 20-year lease agreements. However given the large amount of demolition permits (49 +), we can all assume many of these historic cabins will be either torn down, removed from the property, or sold off and taken down hill. Many former lessee 20- years ago did the same.

I am suggesting that this 5-year extension be considered the "time- out" necessary to bring focus to Kokee. We need a cohesive combined management plan that is inclusive rather then sole owner attitude like the DLNR is displaying. Here locally one is confronted by State personnel with improper attitude against residence and tourist alike. Workers are seen un-caring to their daily duty. Really! What are their duties one may ask?

DLNR should pay immediate attention and demonstrate to this State what is their implementing plan to deal with abandon cabins and vacant lands first. They should be challenged to show cause on their intent to these concerns before they forge into the existing cabins because its operable and the DLNR wants to raise fees immediately. No! They (DLNR) have proven time and again they are incapable of handling any form of management to our State parks.

Its time the State allow non-profit organizations the opportunity to bid for the management of the mountain.

aloha

James K. Torio  
Kauai

## testimony

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**From:** jonathan jay [jonathan@dakauai.com]  
**Sent:** Tuesday, March 11, 2008 10:12 AM  
**To:** testimony  
**Subject:** re: HB 2872 Creating Five Year Extension to Existing Koke`e and Waimea Canyon leaseholders

Please support this legislation.  
We need to see more of the big picture  
before disrupting existing stakeholders.

The DLNR has a responsibility to come up with something that conforms to local concerns  
before moving forward.

This 5yr. extension should provide that.

Mahalo for your support,

jonathan jay  
5424 Kuapapa Street  
Kapa`a, HI 96746

**testimony**

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**From:** Donn Carswell [curly@aloha.net]  
**Sent:** Tuesday, March 11, 2008 1:24 PM  
**To:** testimony  
**Subject:** HB 2872--HSCR 866-08

HEARING TO BE HELD IN ROOM 414 ON 3/12/08 AT 2:45 P.M.—WTL; WAM COMMITTEES

MR CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I submitted written testimony on this bill to the House Finance Committee--- I would like to add to this testimony: An extension of the current Revocable Permits is warranted, because of the pending Appeal on the constitutionality of the State taking private cabins without compensation. This appeal has just been filed and it may take two to three years to get a decision from the Supreme Court.

Recently the State has acquired three more cabins by default. The State now has 17 cabins and at least 21 lots that could be made accessible to the public by drawing or auction. This would: 1) meet Public demand for "a cabin in Koke'e" and 2) increase revenues to the Koke'e and Waimea Canyon Parks by \$150,000. Mr Quinn has testified and Wayne Souza maintains that only seven of the lots are buildable, because many of the lots are in the well head protection area, or 1,000 feet from a well. EPA standards prohibit cesspools in the well head protection area.. However septic systems with aerobic tanks will produce effluent acceptable to the EPA. They are basically cone shaped tanks with one quarter horse power compressors circulating air through the effluent and digesting it. The tanks can be run by solar power.

Referring to the testimony of the Attorney General submitted at the finance committee meeting

On Feb 6<sup>th</sup>, 2008, at the bottom of page 3 he says: "Second, the end of each of the preceding leases has involved

litigation. We do not believe that it would be in the best interests of the State to enter new leases with existing Tenants. Doing so will simply postpone final resolution of the disputed issues." I TAKE GREAT EXCEPTION TO THIS

STATEMENT AS AN INCUMBENT LESSEE. FIRST OFF, THERE ARE ONLY 29 OUT OF 96 CABIN OWNERS WHO ARE IN

3/11/2008



LITIGATION, AND THE A.G. WANTS TO PENALIZE ALL LEASEHOLDERS BECAUSE 29 LESSEES ARE TRYING TO PROTECT

THEIR CONSTITUTIONAL RIGHTS. THIS IS A HIGHLY DISCRIMINATORY STATEMENT. I CANNOT SEE ANY "POSTPONE-

MENT OF THE FINAL RESOLUTION OF THE DISPUTED ISSUES" BY NOT EXTENDING THE REVOCABLE PERMITS. THE

APPEAL HAS BEEN FILED AND WILL BE HEARD BY THE INTERMEDIATE COURT OF APPEALS OR THE SUPREME COURT

ON A NORMAL OR ACCELERATED SCHEDULE. THE DISPUTED ISSUES WILL BE FINALLY RESOLVED WHETHER THERE IS

AN EXTENSION OR NOT. IF THE STATE DECIDES TO AUCTION ALL THE CABINS BEFORE THE SUPREME COURT DEC-

ISION AND THE STATE LOSES THE APPEAL, THE STATE WILL HAVE TO COMPENSATE THE PRESENT PLAINTIFFS FOR

THEIR CABINS. THIS COULD RUN BETWEEN THREE AND FOUR MILLION DOLLARS!!! THIS WOULD BE A LARGE GAMBLE ON THE PART OF THE STATE!!!

THANK YOU,

DONN A CARSWELL  
P.O. BOX 24  
HANAIEI, 96714  
KOKE'E CAMP LOT 61

## Frank O. Hay

**TESTIMONY regarding House Bill 2872 – Relating to Public Lands**, before the Hawaii State Senate Committee on Water and Land, Senator Clayton Hee, Chair, and Senator Russell S. Kokubun, Vice Chair, Meeting at Honolulu, Oahu, Hawaii on 12 March 2008

Ladies and Gentlemen,

This House Bill would essentially give our historic community some “breathing room” from a Department of Land and Natural Resources plan to conduct an auction for almost ninety recreation residence cabins and lots within the Koke’e and Waimea Canyon State Parks. It would establish a community advisory group to work with DLNR on an acceptable plan and would very likely avoid a historic preservation tragedy.

Mr. William Wynhoff, the Deputy Attorney General, has testified before this Senate Committee (of the 2006 Legislature) and more recently before the Land Board that direct negotiations for Koke’e cabins and lots are allowed under both HRS §171-36.2 and HRS §171-44. Mr. Wynhoff also testified before the Land Board that the decision to go to auction in 1985 – the first ever in Koke’e history – was based on an erroneous DAG opinion.

We have Senator Kokubun and the 2002 Legislature to thank for striking the word “Urban” from HRS §171-36.2, now titled Public lands for historic preservation and restoration, and enabling DLNR to negotiate leases for “public lands in the State for use in historic preservation and restoration projects: (1) Through negotiations; and (2) For a price which shall be determined by the board.” That law now provides one avenue for direct negotiations.

The former DLNR Chairperson, Peter Young, confirmed that the cabins and the surrounding areas “... **were determined to be a significant historic district** through the governmental review process ...” and “... **for all intents and purposes, is in the ‘Hawaii Inventory of Historic Places’.**”

The other avenue allowing direct negotiations is HRS §171-44, which allows the Board to “lease, by direct negotiation and without recourse to public auction, lands within a state park or forest reserve ... for recreation-residence use ...”

Despite these two clear provisions in the law, DLNR remains committed to an auction, which could only repeat the historic preservation tragedy of 1985, when our community lost NINETEEN historic homes – one-sixth of our community was relocated, disassembled, or demolished.

I close with one last thought: At a public meeting in June 2006, one Kaua‘i native quoted a poetic Hawaiian proverb “*I ka wa ma mua, i ka wa ma hope (time before time after) ka wa ma mua, ka wa ma hope (one learns from the past [history], to go forward [future]).*” Then she sadly said, “Nothing has been learned from the mistakes made in 1985.”

I urge you to learn from those mistakes and pass this bill, to send a clear message to the Department of Land and Natural Resources to preserve one of Hawaii’s last remaining board and batten communities. Thank you very much.

PO Box 9, Kekaha, Kauai, Hawaii 96752-0009  
(808) 639-7704

**testimony**

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**From:** Linda F. Collins [lfc@kikiaola.com]  
**Sent:** Tuesday, March 11, 2008 2:44 PM  
**To:** testimony  
**Subject:** HB2872

Aloha,

I support bill HB2872.

Linda Faye Collins

**TESTIMONY**

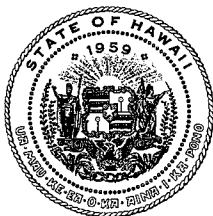
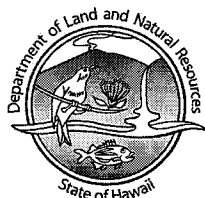
**HB 2872**

**(END)**

**TESTIMONY**

**HB 3272**

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Laura H. Thielen  
Chairperson  
Board of Land and Natural Resources  
Commission on Water Resource Management

Russell Y. Tsuji  
First Deputy

Ken C. Kawahara  
Deputy Director - Water

Aquatic Resources  
Boating and Ocean Recreation  
Bureau of Conveyances  
Commission on Water Resource Management  
Conservation and Coastal Lands  
Conservation and Resources Enforcement  
Engineering  
Forestry and Wildlife  
Historic Preservation  
Kahooolawe Island Reserve Commission  
Land  
State Parks

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

**On House Bill 3272— RELATING TO PUBLIC LANDS**

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

**March 12, 2008**

House Bill 3272 proposes to permit a current lessee of public land to be disposed by public auction to match the winning bid under certain circumstances. The Department of Land and Natural Resources strongly opposes this bill.

Leasing of public lands by public auctions is done to ensure that all applicants are given the opportunity to apply for such lands on equal footing with full disclosure of all material terms. The fundamental principle underlying the use of public auctions is to ensure that no applicant is given an undue advantage over any other applicant. Allowing a current lessee to circumvent that process when a new lease is issued seriously undermines that principle and produces a chilling effect on the willingness of potential applicants to bid on such leases. Serious applicants must usually invest significant time and resources that are not reimbursable in order to qualify as an applicant and to conduct due diligence investigations before participating in a public auction. The possibility, if not probability, that an existing lessee will match the winning bid and deprive the successful bidder in public auction of the new lease will clearly be a significant deterrent to potential applicants.

Under the standard terms of leases for public lands, any improvements on the lands are owned by the State at the termination of the lease. Additionally, all lessees have a duty to maintain any improvements on the land and to ensure that such improvements do not fall into disrepair. When accepting a lease for public lands, all lessees are aware of those conditions, which are a standard practice in both private and public real estate sectors. Allowing current lessees to match the winning bid solely based on their knowing and willing compliance with the standard terms of the lease gives the misleading perception, or worse, creates a legal presumption that installing improvements of a certain value will give rise to a proprietary interest in future lease dispositions.

SENATE COMMITTEE ON WATER AND LAND  
Thursday, March 13, 2008  
2:45 PM  
Conference Room 414

HOUSE BILL 3272  
RELATING TO PUBLIC LANDS

Testimony in Support with Amendments

Aloha Chair Hee, Vice Chair Kokubun and Committee Members:

I am present to testify in support of the intent of House Bill 3272. This measure serves to protect lessees of state public land who, in good faith, have invested in property improvements in order to ensure continuation of their business at their chosen or necessary location

In addition, I would like to direct your attention to state public lands that are or have been properly leased for public purposes, but where the lease has been or will be canceled by the state to advance the public property toward private commercial development under an auctioned lease. Such aggressive pursuit of commercial development at the expense of established public need and active public use shortchanges the public interest.

For example, an approximately ½-acre state property adjacent to the Ala Wai Golf Course was recently approved by the Board of Land and Natural Resources for auction of a commercial development lease. For many years this public land has been leased to local businesses for essential public parking, which this main thoroughfare in and out of Waikiki is sorely lacking, and without which the survival of many small businesses would be impossible.

In 1998 the larger community embarked on a master plan for this community business district that designated this as one of two vital locations for public parking, with this site to also have a needed community center for seniors and young people alike. But the Department of Land and Natural Resources (DLNR) has now shunned the community's need for public use of this public land, and is instead moving to auction a commercial development lease to the highest bidder.

The community and our Legislators have repeatedly appealed to the DLNR to no avail. We therefore respectfully ask your assistance in considering additional language for House Bill 3272 that would **1) establish a requirement that the DLNR submit findings on any public impacts the auction of a commercial development lease would have on the surrounding community, including businesses, residences, public open space and recreational needs, and the feasibility of alternative uses of the public land for public purposes; and 2) preclude the auction of a commercial development lease for public land in cases where there is an established public need and planned public use that is a public priority.**

As an eight-term elected member of the Neighborhood Board that represents the interested and affected community, and a director of both the Kapahulu Business and Community Association and the Waikiki Area Residents Association, I sincerely thank you for your understanding of the public consequences of the DLNR's actions, and for your serious consideration of the suggested amendments and their addition to this measure.

Respectfully,  
Michelle S. Matson



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 3272, RELATING TO PUBLIC LANDS.

**BEFORE THE:**

SENATE COMMITTEE ON WATER AND LAND

**DATE:** Thursday, March 12, 2008                      **TIME:** 2:45 P.M.

**LOCATION:** State Capitol Room 414  
*Deliver to: Room 228, 1 copy*

**TESTIFIER(S):** Mark J. Bennett, Attorney General, William J. Wynhoff,  
Deputy Attorney General, or other Deputy Attorney  
General

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Chair Hee and Members of the Committee:

The Department of Attorney General opposes this bill.

This bill requires the Department of Land and Natural Resources to allow a "current lessee" who has made "substantial improvements" to "match the winning bid" when a lease is disposed of at auction.

First, it is not clear what, if any, leases this bill affects. The term "substantial improvements" is to be defined based on a dollar value of improvements. The dollar value has not yet been inserted. Depending on the amount inserted, the bill may affect few, if any, leases.

Moreover, even if there was a previous lease of property on which the lessee had made the threshold level of improvements, the auction of a new lease would typically take place after the previous lease (including any holdover period) already expired. In such cases, there would be no "current lessee" and the bill would have no effect or applicability.

Second, the only person who testified in favor of this bill in the House wanted the bill amended to address a totally different subject. This was not done and therefore the intent of the bill remains unclear. The Department of Attorney General is concerned that the bill may be intended to affect



recreational-residential cabin lots in Koke'e State Park and Waimea State Park. These lots were previously leased, but all of these leases (including a one-year holdover) already expired on December 31, 2006.

Because the Koke'e leases have already expired, there is no "current lessee." The bill will not apply to the intended auction of leases at Koke'e. But, there have already been three lawsuits concerning the former leases. One of the lawsuits was decided wholly in the State's favor and was appealed by the lessees; the appeal is pending. Another lawsuit was dismissed without prejudice. The third lawsuit remains pending in First Circuit Court. So even though the bill would not (by its plain language) apply to Koke'e, the Department of the Attorney General is concerned that former lessees might base claims upon it in the existing lawsuit or in a new lawsuit.

The Department of the Attorney General requests that this bill be held.

Honorable Senator Clayton Hee  
Committee on Water and Land, Chair

Honorable Senator Russell S. Kokubun  
Committee on Water and Land, Vice Chair

RE: HB 3272 – relating to Public Lands: Auction; current Lessee  
and Improvements – IN SUPPORT with additions

Good Afternoon Chair Hee, Vice Chair Kokubun and Committee Members:

I am Daisy Murai, a resident of Kapahulu and member of the General Public. HB 3272 is a noble gesture to keep Public State Lands opened for the General Public, even though it might be auctioned off to the current Lessee or to a Commercial Venture. The land mass area for the Public Lands for the State of Hawaii is limited, so the best possible use of these valuable properties for the General Public is of the utmost importance.

There are 2 parcels of State land in my own Kapahulu Neighborhood, which could service the General Public, not only for the residents and businesses in the vicinity, but by others. The 2 parcels of property I am speaking about are:

- 1) Property under the HI Freeway (East bound) overpass bounded by Kapiolani Boulevard, S. King Street and Kapahulu Avenue. This is located across Market City Shopping Complex. The City's Motor Vehicle Department is currently using this property, but could serve as a Skateboard Park for several Neighborhoods.
- 2) 548 Kapahulu Avenue, the former Dept. of Health Center Clinic, which is directly across Uncle Bo's and Irifune Restaurants as well as St. Mark's Parish. This property was left vacant after the Health Center closed and has been covered with weeds and plants growing wild and no source of light was available. The Health Center building burned several years ago by vandals. The businesses in the area are paying a month-to-month parking fee to the State for their customers to use. There were times when the weeds and plants were very tall making parking for the patrons a bit challenging at times, but presently has been trimmed. This lot also lacked adequate lighting at night, but now there is a powerful light source at night. I am not sure who is cleaning this property, the State or the Lessees, but notice that there is a lot more customers using this lot than several years ago. I feel this property serves as a valuable source of parking for patrons of this area of Kapahulu and should continue to offer parking for the Public.

I urge an addition to include a provision to continue Public Land usage for the Public as another condition under Auction of Public Lands. The Lessees may also be entitled to bid for the property, but it should also include for Public usage.

Thank you for the Opportunity to speak.

Daisy Murai  
3039 Kaunaoa Street  
Honolulu, HI 96815  
March 11, 2008

Date of Hearing: March 12, 2008 (Wednesday)  
Time: 2:45 pm  
Conference Room 414  
Fax: 586-6659, Senate Sgt.-at-Arms Office

**TESTIMONY**

**HB 3272**

**(END)**

**TESTIMONY**

**HB 2543**

The Senate  
Twenty-Fourth Legislature  
Regular Session of 2008

COMMITTEE ON WATER AND LAND

Hearing  
Wednesday, March 12, 2008  
2:45 p.m.

Chairperson Hee  
Vice Chairperson Kokubun and Honored Senators,

Testimony by: Ralph C. Boyea, Legislative Advocate, Hawai'i County Council

**Testimony in favor of HB 2543 MAKING AN APPROPRIATION FOR A SHOOTING RANGE IN WEST HAWAII ON THE ISLAND OF HAWAII**

On behalf of the Hawai'i County Council, I ask you to pass House Bill 2543. House Bill 2543 appropriates funds to plan, design, and construct a public shooting range in West Hawai'i.

There aren't any shooting ranges in West Hawai'i. Police, conservation officers, sheriffs, security guards, hunters and others licensed to carry guns have no official place to practice and sight-in their firearms. Shooters currently have to find unofficial, unsupervised sites to shoot. The safety of the shooters and individuals in proximity to these sites is of great concern. As the population continues to grow, so does the problem of uncontrolled discharge of firearms.

Unauthorized and unsupervised target practice, and weapons that have not been properly sighted, are a danger to the health and welfare of the public.

Members of the West Hawai'i community have formed the Hawai'i Island Public Shooting Range Working Group. This group is composed of police officers, DLNR conservation officers, other DLNR representatives, hunters, representatives of the Governor's office, representatives of the Hawai'i County Mayor's office, and other community members. The Hawai'i Island Public Shooting Range Working Group has come up with an excellent site location, by the West Hawai'i solid waste facility, and preliminary plans for a public shooting range. Representatives of the Department of Land and Natural Resources have indicated that \$250,000 would be needed to prepare an EIS and other tasks associated with creating a master plan for this project.

The Hawai'i County Council is aware that Mayor Kim has requested your support for this project. The Hawai'i County Council applauds the work of the Hawai'i Island Public Shooting Range Working Group and supports the Mayor Kim's request.

We humbly ask you to pass HB 2543.

**testimony**

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**From:** Ron Finelli [konaron@gmail.com]

**Sent:** Monday, March 10, 2008 9:08 AM

**To:** testimony

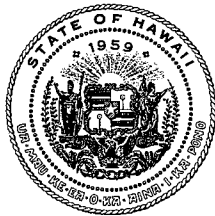
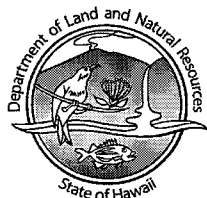
**Subject:** Testimony in Support of HB 2543, Relating to a Public Shooting Range on the Island of Hawaii

Dear Chairman Hee, Vice-Chairman Kokubun, and Members of the Committee on Water and Land:

I support the development of a public shooting range on the island of Hawaii because the Big Island has no public pistol or rifle range on either side. Hunters and shooters are forced to use unregulated areas to sight in and practice their skills. Shooting is a growing sport nationwide and a full range on the Big Island would become a draw for tourists. Reference the indoor shooting ranges on Ohau and the number of tourists who frequent them. As an avid shooter, I urge your support for the development of a long overdue shooting range on Hawaii. Thank you very much.

--  
Ron Finelli  
808-989-1758  
Kona, Hawaii

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
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 2543 – Relating To Making An Appropriation For A Shooting Range In West  
Hawaii On The Island Of Hawaii**

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

March 12, 2008

House Bill 2543 appropriates an unspecified amount of funds to the Department of Accounting and General Services (DAGS) to plan, design, and construct a shooting range on the Island of Hawaii. The Department of Land and Natural Resources (Department) acknowledges its supports for the establishment of this public shooting range, as the Department has been working closely with community members on Hawaii to accomplish this goal. The Department nonetheless is concerned with the fiscal impact this measure will have on the Executive Supplemental Budget request.

The Department supports providing additional staff and funding resources for the Department's Division of Conservation and Resources Enforcement branches across the State and the Department has been working closely with the Legislature to obtain the necessary funds for this broader initiative. And while the Department applauds the intent of this bill, the Department must be mindful that all our islands are crying out for additional enforcement. Rather than passing out this measure, the Department respectfully asks for the Legislature's support of the addition of eleven conservation and resources enforcement positions and four clerk typist positions for deployment statewide to each of the four counties as identified in the Department's supplemental budget request. These additional positions would increase needed staffing statewide and would help improve conservation enforcement capabilities in each of the four counties.

If however, the Legislature decides to pass out this measure to provide funding for a shooting range, the Department recommends that it be designated as the expending agency rather than DAGS.

**testimony**

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**From:** Hilodik@aol.com  
**Sent:** Monday, March 10, 2008 8:35 AM  
**To:** testimony  
**Subject:** HB 2543 Testimony

**Testimony in Support of HB 2543, Related to a Public Shooting Range on the Island of Hawaii**  
Committee on Water and Land Hearing Scheduled Wednesday, March 12, 2008, 2:45 PM,  
Conference Room 414

Dear Chairman Hee, Vice-Chairman Kokubun, and Members of the Committee on Water and Land:

My name is Richard Hoeflinger. I have personally been involved in the 20-year long effort to establish a public shooting range on the Big Island for the past 8 years. I am a founding member of the Hawaii Island Public Shooting Range Working Group which was formed in 2004.

A lifelong hunter, I can speak to the handicap island hunters face with lack of a designated venue to sight in firearms and develop the marksmanship skills essential to the humane taking of game. The proliferation of informal shooting sites around the island has raised growing concern among many of us over related safety issues and the increasing accumulation of debris on public lands.

In the years I formerly resided on the mainland, I was a competitive shooter in all disciplines: rifle, pistol, and shotgun. Lack of a multi-purpose shooting facility on the island now limits my participation solely to the latter. Competitive shooting is noted for its enviable safety record and ability to engender discipline, purpose, and commitment in participants, young and old alike. I share with others the sorely missed opportunity to engage in competitive rifle and pistol shooting that I so enjoyed in the past.

As a veteran Hunter Education Program instructor, I am concerned with the dichotomy of a state-mandated program for instruction in safe firearms handling and marksmanship training for new hunters, and the corresponding absence of a facility in which to conduct such a program. A former police officer, I also recognize the disadvantages our law enforcement personnel face with lack of a suitable facility in which to conduct training programs and routine firearms qualification exercises. The shooting facility we have proposed addresses all of the aforementioned concerns.

The Shooting Range Working Group, whose volunteer membership includes citizen and law enforcement user groups, state and county government agencies, related businesses and adjacent neighbors, has completed the conceptual design and site selection for a multi-purpose shooting complex on state land in west Hawaii. A preliminary sound survey has been conducted that suggests no adverse impact on surrounding property owners, and successful negotiations have been held to share site access through the adjacent county landfill. Land Board approval was received last year to proceed with planning activities associated with the designated site use. We now need some financial assistance to carry this effort forward.

I respectfully urge the Water and Land Committee to pass HB 2543, which will support preparation of an Environmental Impact Statement and other planning activities required for this much needed



public shooting facility.

Sincerely,

Richard Hoeflinger  
Keaau, Hawaii  
March 10, 2008

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## testimony

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**From:** J. C. Tyler III [jct3kona@hawaii.rr.com]  
**Sent:** Monday, March 10, 2008 10:00 PM  
**To:** testimony  
**Subject:** HB 2543 (In Support)

Testimony in Support of HB 2543, Relating to a Public Shooting Range on the Island of Hawaii Hearing Scheduled before the Senate Committee on Water and Land Wednesday, March 12, 2008, 2:45 PM, Conference Room 414

Dear Chairman Hee, Vice-Chairman Kokubun, and Members of the Committee on Water and Land:

Thank you very much for hearing HB2543. I have read the bill and speak for myself and my family IN STRONG SUPPORT of it.

As a lifelong resident of and former four-term county council member from the North Kona district, I know firsthand of the need for and strong interest in a public shooting range in West Hawaii, where no such facility currently exists.

For this reason, many Hawaii Island residents, like myself, have been personally involved in ongoing public-private grass-roots community efforts to bring this project to fruition for over 10 years. A volunteer community group, known as the Hawaii Island Public Shooting Range Working Group, comprised of both public and private sector members, is spearheading and coordinating these ongoing efforts.

Although I am a member of that group, my testimony today is being submitted on my own behalf.

By way of background and in support of passing this bill, please consider that:

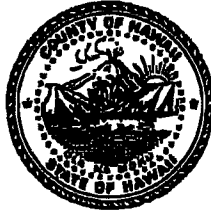
1. A suitable site for the range already has been selected and set aside by the DLNR Land Board.
2. A draft conceptual layout for a facility to accommodate anticipated and desired resident, visitor and public safety agency uses has been completed.
3. Range plans are being coordinated with existing roadway access points and utilities within the adjacent County Puuanahulu landfill site and will include state-of-the-art best practices.
4. In concert with the Federal Pittman-Roberts program and considerable volunteer community efforts, matching and in-kind funding opportunities are expected to augment the requested funding.
5. The range is supported by diverse community members, business groups, relevant public agencies, as well as the Hawaii County Council and Mayor Harry Kim.
6. The development of a public shooting range range in West Hawaii is vital for firearm training and safety needs of present and future generations of residents, visitors, and public safety personnel.
7. Passage of this bill will provide necessary funding to move this project to the next stage.

I respectfully request and thank you for your favorable consideration and passage of HB2543.

J. Curtis Tyler III  
Kailua-Kona, Hawaii  
Tel: (808) 325-6600

3-10-08 2:08PM, SUN MARCH

Harry Kim  
Mayor



Dixie Kaetsu  
Managing Director

Barbara J. Kossow  
Deputy Managing Director

## County of Hawai'i

891 Ululani Street • Hilo, Hawai'i 96720-3982 • (808) 961-8211 • Fax (808) 961-6553  
KONA: 75-5706 Kuakini Highway, Suite 103 • Kailua-Kona, Hawai'i 96740  
(808) 329-5226 • Fax (808) 326-5663

March 10, 2008

The Honorable Clayton Hee  
Chair, Committee on Water and Land  
415 South Beretania Street  
Honolulu, HI 96813

Dear Chair Hee and Committee Members:

Re: HB 2543

The County of Hawai'i is in full support of HB 2543, which would appropriate funds for a shooting range in West Hawai'i. We have worked with the proponents of the shooting range for many months. The selected site is adjacent to the Puuanahulu Landfill, and we have been assured by the landfill operator that a shooting range would be compatible with their operation. Based on that assurance, we have endorsed the shooting range, and believe it would be a valuable addition to the recreation opportunities available to our community as well as a tourist attraction for many of our visitors.

I understand that \$250,000 would be the amount needed for fiscal year 2008-09 to get this project started, and I hope that this year's Legislature can see its way clear to providing these funds.

Thank you for your consideration.

Aloha,

A handwritten signature in cursive script that reads "Harry Kim".

✓ Harry Kim  
MAYOR

## testimony

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**From:** Brian Nakashima [bnakashima@hawaii.rr.com]  
**Sent:** Monday, March 10, 2008 9:28 PM  
**To:** testimony  
**Subject:** Testimony in Support of HB 2543, Relating to a Public Shooting Range on the Island of Hawaii, Hearing before the Committee on Water and Land, Wednesday, March 12, 2008, 2:45 PM, Conference Room 414

Dear Chairman Hee, Vice-Chairman Kokubun, and Members of the Committee on Water and Land:

My name is Brian Nakashima. I live at 81-6347 Keopuka Place in Kealahou.

I support HB 2543, development of a shooting range on the island of Hawaii, because there is a need for hunters and shooters to sight-in and practice with their firearms in a safe environment. Currently, there are a number of "ad hoc" shooting areas that are used. These are generally on state or county lands which are not approved for such use.

In addition to being a hunter and competitive high power rifle shooter, I run a gun repair and retail store in Kealahou. I have had to tell purchasers that there are no public ranges on the island and that the only legal option for them to use their firearms would be on private property where it does not affect the safety of others.

To compete in rifle competition, I have had to travel to Oahu or to a private club in Glenwood.

I believe that a public shooting range on island of Hawaii would be of benefit to local users as well as to visitors and might serve as a national destination provided that a "world class" range as envisioned is eventually built.

Please pass on HB 2543 and support the requesting start-up funds of \$250,000.00 (Two hundred fifty thousand dollars).

Thank you.

Sincerely,

Brian Nakashima

**HAWAII RIFLE ASSOCIATION**  
**Established, 1857**  
**P.O. Box 543, Kailua, Hawaii 96734**  
**March 11, 2008**

Testimony **IN STRONG SUPPORT** on **HB 2543**, MAKING AN APPROPRIATION FOR A SHOOTING RANGE IN WEST HAWAII ON THE ISLAND OF HAWAII  
Before the **Senate Committee on Water and Land**,  
Senator Clayton Hee, Chair  
Senator Russell S. Kokubun, Vice Chair  
**Wednesday, March 12, 2008, 2:45 P.M.**  
**Conference Rm 414**

Honorable Chair, Vice Chair and Members,

HRA is in strong support of this bill. Our charter requires that we support range development, a place to shoot. Without exercise of our rights and skills, Hawaii's gun owners cannot remain "well-regulated" (Article 1, Section 17, Hawaii State Constitution). A safe place to enjoy our heritage and sport is increasingly rare, because of natural encroachment from other forms of land use and necessary restriction on formerly acceptable "informal" ranges. That's why DLNR may, by statute, develop shooting ranges throughout our State.

This planned range, in an area long without an appropriate facility, has the potential to provide such a place for Hawaii's people as well as attract shooting tourism. My wife, children, grandchildren, and I look forward to journeying from Oahu to West Hawaii, renting a car, booking a hotel room, shooting there, and dining afterwards in a good restaurant. Mainland shooters, with the proper marketing, will do likewise when snow and ice cover their home ranges.

Thank you for hearing this bill. We urge you to move it on to passage.

HRA pledges to participate in the correct development and safe stewardship of this gift.

Thank you for the opportunity to testify for HRA.

Dr. Maxwell Cooper,  
Legislative Co-Chair,  
808 225-6944

## testimony

---

**From:** HENRY SILVA [silvahjrm@prodigy.net]  
**Sent:** Tuesday, March 11, 2008 1:58 PM  
**To:** testimony  
**Subject:** HB 2543 to be heard before the Senate Committee on Water and Land

Dear Chairman Hee, Vice-Chairman Kokubun, and Members of the Committee on Water and Land.

I am in support of HB 2543, a Public Shooting Range on the Island of Hawaii, Scheduled before your Committee on Wednesday, March 12, 2008 at 2:45PM, Conference Room 414.

As a Retired Police officer, a member of a gun club, and the father of a son who represented the State of Hawaii in the Junior Olympics for small bore rifle, while at Kamehameha Schools, a friend and and associate of the many varied Law Enforcement personnel on our island and our citizens who want a safe place to practice shooting, I ask that you please support this bill.

There are many factors and reasons for this range that would take to long to state at this point. I am willing to answer any questions that you might have at any time. I can be contacted via this email address, or at 77-6309 Kaumalumu Drive, Holualoa, Hawaii or by telephone at 324-1583. Thank you for considering our community.

Henry (Hank) J. Silva  
Major (retired) Hawaii P.D.

**TESTIMONY**

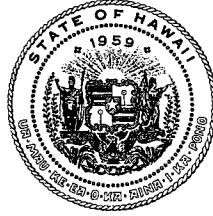
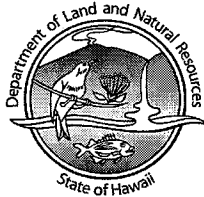
**HB 2543**

**(END)**

**TESTIMONY**  
**HB 3173 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  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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

**On House Bill 3173, House Draft 1 – Relating To Grounded Vessels**

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

**March 12, 2008**

House Bill 3173, House Draft 1 proposes to clarify that, upon assuming control over a grounded vessel, the Department of Land and Natural Resources (Department) shall remove the vessel by any means necessary in order to minimize damages to the natural resources and not become a hazard to navigation. The Department is in strong support of this Administration legislation.

Presently, when the Department assumes control of a vessel that has been grounded on a coral reef or in imminent danger of breaking up and that cannot be removed immediately by the owner in a manner that is reasonably safe, the statutes require the Department to direct the vessel to a safer location. When encountering situations where the vessel is breaking up or damaged beyond repair and becomes a threat to the natural resource, or a hazard to navigation, total removal of the vessel may not always be practical. As an example, there are vessels aground at the Kure Atoll and off the Honolulu International Airport reef runway that need to be removed in pieces because it has been determined that to remove them whole would cause extensive damage to the natural resources.

This bill would allow the Department to take immediate action and reduce the cost to remove a grounded vessel that has been determined to be a threat to natural resources or a hazard to navigation.

The Department strongly recommends passage of this Administration bill.



# Ocean Tourism Coalition

*The Voice for Hawaii's Ocean Tourism Industry*  
820 Mililani Street, Ste. 810  
(808) 205-1745 Phone (808) 533-2739 Fax  
office@oceantourism.org

March 12, 2008

Testimony To: Senate Committee on Water and Land  
Senator Clayton Hee, Chair

Presented By: James E. Coon, President  
Ocean Tourism Coalition

Tim Lyons, CAE  
Executive Director

Subject: H.B. 3173, HD 1 – RELATING TO GROUNDED VESSELS.

Chair Hee and Members of the Committee:

The Ocean Tourism Coalition (OTC) represents the 300 small commercial passenger vessels operating out of state harbor facilities. We speak in support of H.B. 3173 as amended.

We agree with the intent of this bill and protecting the reef from abandoned or derelict vessels. We want to see language that would protect the rights of the vessel owner to have the first right to coordinate the salvage of his own vessel. This is especially important for the commercial operators whose vessels may be worth well over a million dollars. We are highly motivated to save our vessels and do as little damage to the reef or environment as possible.

The amendment in HD 1 reflects the rights of the vessel owner to be the primary agent in the salvaging of his vessel.

Thank you.

**TESTIMONY**

**HB 3173 HD1**

**(END)**

**TESTIMONY**  
**HB 3176 HD1**

Senator Clayton Hee, Chair  
Senator Russell S. Kokubun, Vice Chair  
Committee on Water and Land

Wednesday, March 13, 2008  
2:45PM  
Conference Room 414

**In Support w/Recommendation for Amendment of HB3176 HD1- Administrative penalties; Stony coral and live rock damage.**

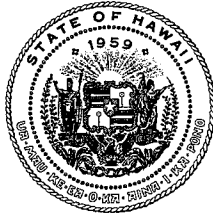
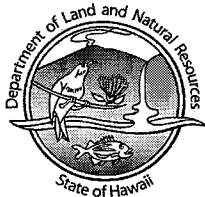
Honorable Committee on Water and Land Chair Hee and Vice Chair Kokubun and committee members. I am Roy Morioka a fisherman and small vessel owner and I thank you for this opportunity to testify in support with reservations of levying administrative penalties when **careless and unnecessary** damage is inflicted on our sensitive and critical reef resources vital to our ocean ecosystem. My recommended amendment results from great concern that when an accident occurs and the party(ies) involved, took all practical precautionary and preventative actions to avoid or mitigate such damage, that these incidents will be exempted and treated with common-sense and fairness.

For example, a vessel loses power and is helplessly drifting toward certain disaster and peril to those on board and the only recourse is to deploy an anchor to stop the drift to protect life and limb, that these circumstances be given consideration and the incident exempted from the fine or minimized greatly. Such incidents are not intentional and because I have seen legislation requesting insurance to cover such incidents as vessel groundings, this legislation may lead to requiring insurance to possibly cover stony coral and live rock damage too. This could be cost prohibitive for small commercial, recreational and subsistence boaters to purchase and the intent (which I believe is to create greater caution and awareness of protecting the reef) of the measure will have been lost.

The concept and appropriate penalties for carelessness and negligence is a good one. However, to protect against over-zealous application of the penalties, please consider those situations and conditions that are life threatening, unintentional and amend this bill to include language that will adequately protect those who did not willfully nor negligently cause such damage to occur are treated fairly. Thank you again for this opportunity to share my qualified support and concerns.

Sincerely Yours,  
Roy Morioka

LINDA LINGLE  
GOVERNOR OF HAWAII



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

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

**on House Bill 3176, House Draft 1 -RELATING TO ADMINISTRATIVE PENALTIES  
FOR DAMAGE TO STONY CORAL AND LIVE ROCK**

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

**March 12, 2008**

House Bill 3176, House Draft 1 would authorize the Board of Land and Natural Resources (Board) to impose administrative penalties for damage to stony coral and live rock based on area, using an accepted economic valuation method to gauge the relative value of the damaged coral area, in addition to a penalty on a per specimen basis. The Department of Land and Natural Resources (Department) opposes the House Draft 1 and instead, strongly supports the original version of this Administrative bill.

First, requiring an economic valuation will limit the discretion of the Board in regard to penalties. Specifically, it would prevent the Board from granting more lenient fines in cases where damage was inadvertent and the operator made good faith attempts to prevent it; and could mandate smaller fines in cases where a violator was reckless or intentional in their actions. The reason the Board is currently given such flexibility in every other case where the statutes impose civil fines is to allow for accommodations like this to be made. People who feel their due process was compromised may seek a contested case hearing, and then subsequently appeal to court. The current system thus ensures appropriate checks and balances on the Board's discretion, without the need for an economic valuation.

Second, this is a penalty bill not a mitigation bill. A fine is not based on an economic valuation (which is used to argue for damages relative to restoration costs or compensatory mitigation), but is instead intended to serve as a significant penalty to responsible parties for illegal actions and to encourage compliance with the law on the part of the greater public. For example, when one receives a parking ticket for \$40, the amount of penalty is not based on the size of the parking space that was illegally occupied or on the value of the real estate involved; on the contrary, the fine is designed to be a reasonable punishment for the violation and a deterrent to future violations.

The fine for coral and live rock was to be based, in part, on similar fines already in statute for threatened and endangered aquatic life. Part of the rationale for this is that in addition to monk seals and sea turtles, the only other marine life completely protected against take, damage or harm in Hawaii is live coral and live rock, hence it is logical that the penalties for take of both be

equivalent. A similar threatened and endangered species statute protecting plants allows for a penalty ranging from \$5,000 up to \$10,000, depending on whether a plant is listed as threatened or endangered, further highlighting how the proposed penalty in our original bill is consistent with current precedent.

If one needs to rationalize via an economic argument a penalty of \$5,000 per square meter for coral and live rock, then this raises the specter of also having to rationalize the penalty amounts for sea turtles and monk seals, or for each listed plant under Forestry and Wildlife's jurisdiction. If this line of reasoning is taken to an extreme, the Department might eventually need to provide an economic justification for any penalty imposed for take, harm or death of a natural resource. While this is important when assessing damage for recovery relative to funding mitigation or restoration projects, it is clearly not a logical direction from a precedent perspective for determining fines.

At the present time, Section 187A-12.5, Hawaii Revised Statutes (HRS), authorizes the Board to impose administrative fines for the taking, killing, or injuring of aquatic life on a "per specimen" basis. This approach has been and remains appropriate for situations involving fisheries violations.

However, section 187A-12.5, HRS, does not apply well to environmental damage or to the breakage of living coral colonies and live rock, especially in circumstances involving vessel groundings and other large-scale resource damage incidents. In such cases it is difficult to determine the number of specimens that might have been originally present once they have been crushed or destroyed in such a grounding event. This allows parties a way to challenge the Department's damage estimates and the associated penalties proposed.

By way of example, the recent grounding of a charter dive vessel in the Molokini Marine Life Conservation District damaged many hundreds of coral colonies, but conducting damage assessments to determine the total number of injured specimens has been time consuming and difficult to quantify. The Department's evaluation by the number of coral heads damaged has been challenged by the responsible party. An area-based approach would have been far more practical in this situation, had this been available to the Department. The measure as proposed would therefore facilitate prosecution of such incidents, and reduce the possibility of challenges to such enforcement.

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 3177 - RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT, House Bill 3178 – RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS, and this measure, House Bill 3176 - RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO STONY CORAL AND LIVE ROCK to deter unlawful behavior by increasing penalties for violations of the State's natural resources laws and rules.

Coral reefs are sacred to the Native Hawaiian people, and are signature ecosystems of the Hawaiian Islands. Their living substrate (coral, live rock, and calcareous algae) provides the food and shelter for the myriad of native and endemic reef organisms that populate the State's coastal waters. Hawaii's coral reefs also serve as the backbone for a large part of the State's vibrant marine tourism industry, creating many of our world-famous wave breaks, providing subsistence, recreational, and commercial fishing for residents and visitors alike, and maintaining a marine species endemism rate that ranks among the highest in the world. They also serve an increasingly important role in terms of natural defenses against rising sea levels resulting from global climate change.

In summary, the original bill would authorize the Board to assess administrative penalties for damage to stony coral and live rock on an area basis in addition to a per specimen basis, at the Board's discretion. This will result in more effective and appropriate financial redress in cases of damage to the coral reefs that are vital to the State's ecological and economic security. By contrast, the amended version of the bill would reduce the Board's discretion, and introduce an inappropriate rationale into the process of determining fines for resource damage. The Department therefore opposes the House Draft 1, and urges the Committee to restore the originally proposed language of this Administrative bill.



HB3176  
TONY COSTA - TESTIMONY  
HAWAII NEARSHORE FISHERMEN

THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair  
Senator Russell S. Kokubun, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, March 12, 2008  
TIME: 2:45 p.m.  
PLACE: Conference Room 414  
State Capitol  
415 South Beretania Street

From: Tony Costa  
Hawaii Nearshore Fishermen  
Honolulu, Hawaii  
808-540-1308 Tel

Copies needed: 5

TESTIMONY

My name is Tony Costa and I am testifying on behalf of Hawaii Near Shore Fishermen, a loosely organized, tight-knit group of nearshore fishermen.

HB3176 seeks to raise penalties for damage to stony coral and live rock by extrapolating fines to a higher amount through an "economic valuation method".

Although HNF are in support of the intent to "send a strong message" about coral reef protection through scary fines and penalties, we would like to see language that clearly acknowledges accidental reef groundings and or non-malicious stony coral and live rock accidental damages not being subject to these fines.

HB3176 raises several questions about this relatively new idea of criminalizing reef damage and assessing monetary fines as "deterrents". While we agree the reef needs our utmost care and protection, we would like some safeguards:

Examples of accidental or non-malicious breaking of stony coral and or live rock would be when a vessel sinks due to High surf or gale force or hurricane force weather, emergency deployment of an anchor due to power loss (a common practice in emergency situations), or even walking on the crushed rock/rubble at Sandy beach as you body surf.

HB3176  
TONY COSTA - TESTIMONY  
HAWAII NEARSHORE FISHERMEN

Another aspect to consider would be ocean dredging and harbor construction - would all coral and live rock damaged be considered a finable violation?

Another question might be would taxpayers pick up the tab to pay for government-contracted vessels that sinks and damage reef? In July 11, 2005 the NOAA contracted vessel CASITAS sank and was pulled and scraped off the reef at the NWHI undoubtedly at considerable damage to the reef.

Malicious intentional breaking of coral and taking of live rock is one thing, but saving lives shouldn't come second to penalties in an emergency situation where an accidental breaking may occur. And, ordinary law abiding citizens shouldn't be held financially responsible for taking extraordinary measures to save lives and protect property.

Hawaii Nearshore Fishermen are support the intent of this bill but have reservations about the lack of language that protects innocent emergency situations that may damage coral.

Respectfully submitted,

Tony Costa



# Ocean Tourism Coalition

*The Voice for Hawaii's Ocean Tourism Industry*  
820 Mililani Street, #810  
(808) 205-1745 Phone (808) 533-2739 Fax  
office@oceantourism.org

March 12, 2008

Testimony To: Senate Committee on Water and Land  
Senator Clayton Hee, Chair

Presented By: James E. Coon, President  
Ocean Tourism Coalition

Tim Lyons, CAE  
Executive Director

Subject: H.B. 3176, HD 1 – RELATING TO ADMINISTRATIVE PENALTIES FOR  
DAMAGE TO STONY CORAL AND LIVE ROCK

Chair Hee and Members of the Committee:

The Ocean Tourism Coalition (OTC) is Hawaii's statewide tourism boating organization. We represent the 300 small commercial passenger vessels operating out of state harbor facilities. We speak in support of H.B. 3176 basically with the amendments as contained in HD 1 but with further clarification.

We agree with the intent of this bill and protecting the reef, but we wanted a more scientific formula for determining the per meter values of various coral reefs. Not just one blanket value. Areas of coral have different values based on the amount of use an area sees by the public. For example, Hanauma Bay is the most valuable reef in Hawaii as is Molokini Crater with

approximately 1000 visitors per day. It would seem appropriate to take the study by DAR which is based on Cesar et al.'s study of the economics of Hawaii's coral reefs (Cesar et. al., 2002). The DAR report uses Hanauma Bay results as a proxy for values associated with other MLCD's and reefs. (The reported Hanauma Bay value of \$91.63 per m2 per year contrasts to Cesar's estimates of \$3.51 per m2 per year for Kihei coast, and \$.73 per m2 per year for the Kona Coast found in the same report.)

There are some points that need to be considered. First, the very high per m2 figure for Hanauma Bay is due to the very high levels of use there (up to 3000 people per day). Since almost all of the economic value estimated in Cesar et. al. is a result of human use (about 96% of the total value); the more users in a location, the higher total use value per m2.

We propose to make the Hanauma Bay economic values the base line in determining the value of any specific reef damage. Economists and ecologists can then determine the number of years that an area will be out of service and apply the appropriate yearly recovery rate based on the estimated amount of use an area sees on a daily basis.

Based on prior objections we offer yet another proposed SD 1 which allow for a flat penalty or economical calculated penalty, whichever is in the best interests of the State.

If you pass this bill, please keep the amendments to reflect a more scientific basis to establish reef value.

Thank you.

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**testimony**

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**From:** carl [mjellings@hawaii.rr.com]  
**Sent:** Monday, March 10, 2008 8:46 PM  
**To:** testimony  
**Subject:** HB 3176, HD 1

**DATE:** Wednesday, March 12, 2008  
**TIME:** 2:45 p.m.  
**PLACE:** Conference Room 414

HB 3176, HD 1

**COMMITTEE ON WATER AND LAND**

Honorable Senator Clayton Hee, Chair

Honorable Senator Russell S. Kokubun, Vice Chair

Honorable Committee Members

Judiciary and Labor Committee

Honorable Senator Brian T Taniguchi Chair

Honorable Senator Clayton Hee Vice Chair

Administrative Penalties; Stony Coral and Live Rock Damage//

3/10/2008

. Mahalo for hearing HB3176,,, My Name is Carl Pao Jellings from Waianae a full time fisherman In Support who has Strong Concerns for the growing amounts of vessels anchoring offshore ,In my whole life I have never seen such dramatic growth off our Coast . Recreational Private and Commercial Vessels many in the 10 to 20 ton range in high winds if the anchor is not set by an expert diver this kind of indiscriminant anchoring can have devastating long term impacts on our reefs by just the cumultive amounts of incidents involving green horn types who know very little about seamanship. waterman, or just the reef itself, I would like to ask the Good Senators to amend HB 3176 HD1 to make allowances for times of emergency rescue and lifesaving operations ,TwoYears ago the vessel Island Spirit from Waianae purposely ran aground to get a drowned tourist to paramedics as quickly as possible this is the kind of urgency I speek of Coral will "always" in time" regrow " ,A humin Life once LOST is lost FOREVER,,,

Mahalo Nui for the opportunity to testify

on this Matter Carl P Jellings

Testimony of The Nature Conservancy of Hawai'i  
Supporting With Amendments H.B. 3176 HD 1 Relating to Administrative Penalties for  
Damage to Stony Coral and Live Rock  
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 Hawaii'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. 3176 Relating to Administrative Penalties for Damage to Stony Coral and Live Rock.

**However, we recommend that the economic valuation language included by the Judiciary Committee be removed and the bill be amended back to its original draft.**

There is widespread agreement amongst a variety of stakeholders that Hawaii's fragile environment is in need of improved enforcement and prosecution of violations of our State natural resource laws. Currently, the DLNR does not have an appropriate way to deal with violations that involve large areas of coral damage such as vessel groundings.

As originally drafted, this bill would provide the Department with an appropriate method to calculate areas of coral damage and apply a level of fine that will appropriately punish and deter future violations of this type.

The problem with the economic valuation language added by the Judiciary Committee is that it appears to be based on testimony that suggested that some coral reefs have more monetary value than other coral reefs based solely on how many people use or visit the site where the coral is growing. Human use of an area is just one measure of value. Other measures include ecosystem services provided by a coral reef like fisheries support and protection from storm surge, as well as the arguably intangible—some might say priceless—value of intact and healthy natural ecosystems.

Furthermore, the penalty suggested in the original bill is not for the purpose of funding restoration or mitigation of loss. The primary purpose is to punish violations and effectively deter future unlawful action and damage to uniquely fragile natural resources. The economic value language added to the bill uses an unduly limited and misplaced rationale for setting fines for coral damage.

**Please restore H.B. 3176 to its original draft.**

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zadoc W. Brown, Jr. Carl A. Carlson, Jr. David C. Cole Samuel A. Cooke  
Peter H. Ehrman Kenton T. Eldridge Guy Fujimura J. Stephen Goodfellow Thomas Gottlieb James J.C. Haynes Ron Higgins Peter Ho  
Stanley Hong J. Douglas Ing Mark L. Johnson Dr. Kenneth Kaneshiro Bert A. Kobayashi, Jr. Faye Watanabe Kurren Duncan MacNaughton  
Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

**TESTIMONY**  
**HB 3176 HD1**  
**(END)**



**TESTIMONY**  
**HB 2687 HD1**

fax 586-4459



## Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Water and Land  
Hearing: Wednesday, March 12, 2008 2:45 pm  
Conference Room 414

### Opposition to HB 2687 HD 1 Relating to Aquatic Resources

Aloha. The Conservation Council for Hawai'i opposes HB 2687 HD 1, which requires the Department of Land and Natural Resources to review rules adopted after January 1, 2008 concerning aquatic life and determine whether the rule has achieved its intended purpose.

We oppose this bill because it may be unnecessary. We would hope that all agencies – federal, state, and county – review their rules periodically for effectiveness.

We also oppose this bill because it appears to single out the Division of Aquatic Resources and punish it for attempting to regulate fishing in this state. Fishing is a legitimate and worthy activity in Hawai'i. But it is not a free-for-all. Fishers must understand that fishing – like all activities in public areas using public resources – must be regulated. Fishers understand that our aquatic resources and ecosystems are in trouble, but they fail to acknowledge that regulation is necessary to protect the ocean for all of our citizens to use and enjoy. Regulating fishing does not mean that the fishers are at fault or that fishing is the only stress on our ocean resources.

Mahalo for the opportunity to testify.

Sincerely,

Marjorie Ziegler



**Working Today for the Nature of Tomorrow!**

Telephone/Fax 808.593.0265 • email: [Info@conservehi.org](mailto:Info@conservehi.org) • web: [www.conservehi.org](http://www.conservehi.org)  
P.O. Box 2023 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814

**Hawai'i Affiliate of the National Wildlife Federation**

President: Julie Leialoha • Vice-President: Nelson Ho • Secretary/Treasurer: Kim Ramos • Directors: Fred Kraus, Ph.D. • Douglas Lamerson,  
George Robertson • Claire Shimabukuro • Helene Takemoto • Mashuri Walte • Executive Director: Marjorie Ziegler

**testimony**

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**From:** carl [mjellings@hawaii.rr.com]  
**Sent:** Sunday, March 09, 2008 8:15 PM  
**To:** testimony  
**Subject:** HB 2687, HD1

HB 2687, HD1

**COMMITTEE ON WATER AND**

**LAND**

**Committee on Ways and Means**

**Honorable Senator Clayton Hee, Chair**  
**Honorable Senator Roslyn Baker Chair**

Honorable Committee Members

Aloha Senator Clayton Hee Mahalo Nui for Hearing HB 2687,HD1

My Name Is Carl P Jellings full time comm fishermen In Support of HB 2687, HD1  
its been two years since the ban on Comm gillnetting for U"u or menpache has been in effect,  
hopefully by now should be choke with those bagga"s to bad We still can"t catch'em, Our technique is  
swift unlike lay and wait ,We hope to have Our Legislator"s as well as DLNR consider the reopening  
of this unique Fishery should this Bill make it thru this years Tough  
Legislature....

me the opportunity to testify ...

Aloha and Mahalo for allowing

Senator Clayton Hee, Chair  
Senator Russell S. Kokubun, Vice Chair  
Committee on Water and Land

Wednesday, March 13, 2008  
2:45PM  
Conference Room 414

**In Support of HB2687 HD1, Fishing Rights and Regulations**

Honorable Committee on Water and Land Chair Hee, Vice Chair Kokubun and committee members. I am Roy Morioka, a fisherman and I thank you for this opportunity to testify in support of requiring the department of land and natural resources to determine whether or not rules adopted beginning this year concerning the protection and propagation of certain aquatic life of the conservation and allocation of the natural supply of aquatic life, and the recently adopted bottomfish management and lay gillnet rules have achieved their intended purpose.

As a fisherman, I have witnessed the implementation of rules that had no baseline reference, nor adequate monitoring and analysis to determine whether or not the adopted rule is achieving the desired management outcome. Failure to include such standards, and create a condition where we adopt rules that are not achieving the intended purpose at the expense of a resource not receiving the desired protection or desired conservation effect is unacceptable. Effective stewardship requires baseline references, scheduled monitoring and analyses and periodic reports to the community on whether or not the adopted rule is achieving its intended purpose or not. More importantly, good stewardship would also cause actions to implement new rules if those implemented have not achieved the desired results, or relax or eliminate the rule should the conservation effort be successful.

Thank you again for this opportunity to testify in support of this important measure.

Sincerely Yours,  
Roy Morioka

THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair  
Senator Russell S. Kokubun, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, March 12, 2008  
TIME: 2:45 p.m.  
PLACE: Conference Room 414  
State Capitol  
415 South Beretania Street

From: Tony Costa  
Hawaii Nearshore Fishermen  
Honolulu, Hawaii  
808-540-1308 Tel

Copies needed: 5

**TESTIMONY IN SUPPORT**

My name is Tony Costa and I am testifying on behalf of Hawaii Near Shore Fishermen, a loosely organized, tight-knit group of nearshore fishermen.

HB2687 would require the department of land and natural resources to review rules adopted through chapter 91 for effectiveness.

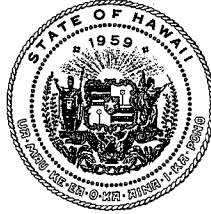
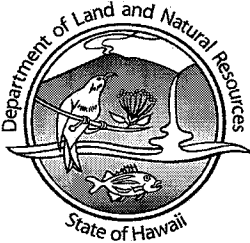
Hawaii Nearshore Fishermen are in SUPPORT OF HB2687HD1

In order to have an honest understanding of the effectiveness of rule change and so that we can determine if we have achieved the intended purpose of fishing rules and regulations adopted by chapter 91, we support the passage of HB2687

Respectfully submitted,

Tony Costa

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
  
RUSSELL Y. TSUJI  
FIRST DEPUTY  
  
KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER  
  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
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 2687, House Draft 1 – RELATING TO AQUATIC RESOURCES**

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

**March 12, 2008**

House Bill 2687, House Draft 1 would require the Department of Land and Natural Resources (Department) to review each rule pertaining to aquatic resource or fishing rights and regulations (pursuant to Chapters 187A and 188, Hawaii Revised Statutes, respectively) adopted after January 1, 2008, and to include a determination on the effects of previously promulgated bottomfish management and lay gill net rules, to determine whether each rule achieved its intended purpose, estimate the timeframe for the rule to achieve that purpose, determine the rule's effect on the resource's health, and determine the rule's effect on the public and user groups. It also asks the Department to prepare an analysis report to the Legislature for the 2009 Regular Session and every five years thereafter. The Department opposes this measure in its present form.

As written, this bill would mandate by statute, monitoring programs that the Department has already put into place. As such, this measure is in the Department's view unnecessary. For example, following the establishment of new bottomfish restricted fishing areas in December, 2006, the Department initiated a comprehensive monitoring program utilizing remote, deep water camera systems that analyze both numbers and sizes of bottomfish inside and outside the restricted areas. This program has been designed to run for the next five years to provide a statistically valid test of this management action. It is currently one of the most technologically advanced monitoring programs for any deep water fishery in the United States.

Similarly, following the passage of new rules regulating lay gillnets in early 2007, the Department instituted a monitoring program using in-water fish surveys, beach seine surveys, and creel surveys to assess the effect of these new rules. As with the bottomfish monitoring program, this laynet monitoring study is funded for the next five years in order to ensure statistical validity.

In addition to the two recently initiated studies cited above, the Department has also undertaken a comprehensive monitoring program in West Hawaii for the past eight years in order to assess the effectiveness of the Fisheries Replenishment Areas for the commercial aquarium fishery instituted by the Legislature via Act 306 in 1998. This monitoring program, which has gained

national and international attention, has proven to be a key test of the effectiveness of area-based management regimes, and to date has demonstrated that such regimes are extremely effective fishery management tools.

At the same time, this bill would require a monitoring and reporting protocol for every rule passed by the Department affecting aquatic life, no matter how minor. In some cases, such as those noted above, such monitoring and reporting programs are completely applicable, but for others, such as the setting of freshwater fishing seasons, such requirements would result in trivial studies that would inappropriately divert limited staff resources. In addition, for certain rules such as bag and size limits that involve multiple species across multiple islands, determining cause-effect relationships between a rule and a subsequent response in the fishery stocks is not a clear cut or straightforward undertaking, due to the number of independent variables involved. Under the requirements proposed by this bill, such studies would still have to be undertaken, even if the information resulting from them would be essentially meaningless. This would once again be an inefficient use of state resources.

The Department notes that the mandated process of administrative rulemaking takes into consideration the impacts of each proposal on resources, businesses, and the public, and includes opportunities provided by law for interested parties to provide their comments. Therefore this proposal would also to some extent duplicate existing protocols. Relative to any rule achieving its intended purpose, requiring reports in the manner proposed would do no more than what is already being done, and would therefore result in duplicative effort and detract from the Department's overall efficiency and productivity.

The Department feels that if this bill is moved forward, a move that we oppose for the reasons noted above, then its provisions should be limited to analysis of rules which regulate discrete fishery stocks or regulate specific gear types, where such monitoring programs can provide properly circumscribed and meaningful scientific data. The Department appreciates the incorporation of its previous recommendation that the review period be lengthened to five years, so as to accommodate the time period which fishery science recognizes as the appropriate minimum in which to observe a statistically significant outcome. Nevertheless, even with this longer reporting period included, the bill continues to insist on an overly broad set of reporting requirements, thereby mandating the production of many potentially meaningless studies and reports.

The Department therefore suggests revising this bill's House Draft 1, SECTION 2, to read as follows:

SECTION 2. (a) The department of land and natural resources shall:

- (1) Review each rule adopted after January 1, 2008, pursuant to chapters 187A and 188, Hawaii Revised Statutes, provided that such review shall be restricted to those rules which regulate a discrete fish stock or fish stock complex, or that regulate specific fishing gear or gear type;
- (2) Determine whether each rule is achieving its intended purpose;
- (3) Estimate the timeframe necessary for each rule to achieve its intended purpose;
- (4) Determine the fishery impact on the aquatic life or the type of fishing gear involved; and
- (5) Determine the effects of each rule on the fishing public.

(b) The department of land and natural resources shall submit a report, including all criteria as noted in (a) of this section, to the legislature no later than twenty days prior to the convening of the 2009 regular session, and every five years thereafter. The department may include the report as part of its annual report to the legislature.

In summary, the Department feels that unless amended as per above, this bill will mandate an overly broad set of requirements that are not properly applicable to the full range of rules governing aquatic resources that are promulgated by the Department, thereby diverting state resources from more pressing resource management needs.



Testimony of The Nature Conservancy of Hawai'i  
Supporting With Amendments H.B. 2687 HD 1 Relating to Aquatic Resources  
Senate Committee on Water and Land  
Wednesday, March 12, 2008, 2:45 PM, 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.*

---

The Nature Conservancy of Hawai'i supports H.B. 2687 HD 1 with the amendments suggested below and attached.

Healthy reefs and fisheries have many economic, environmental and cultural benefits. We all have a stake in their future. Furthermore, fishing is integral to our cultural heritage and our island way of life. However, as anyone who has spent time in Hawaiian waters knows, many of our reefs and fisheries are at serious risk from a variety of threats and a precipitous decline in near shore populations of fishes. In fact, scientists estimate that our near shore fisheries are merely one-quarter of what they were a century ago—that is a decline of 75% over 100 years.

Given this situation, this bill points out the importance of reviewing and assessing whether aquatic resource management and fishing rules are, in fact, working to protect and enhance our natural resources for the present and the future. However, we are concerned that the Department of Land & Natural Resources may not have the resources and capacity to meet the review and reporting requirements in the bill. We suggest a more defined set of requirements that will still provide the Legislature and the public an instructive analysis of whether and how aquatic resource management rules are working.

**The Nature Conservancy recommends that the bill be amended to:**

- **Specifically identify only the DLNR's recent lay gill net and bottom fish rules for monitoring, analysis, and reporting to the Legislature and the public; and**
- **Provide the DLNR with additional resources to properly conduct this review and reporting.**

**Detailed proposed amendments are attached.**

We are united by our mutual interest in ensuring that Hawaii's reefs and near shore waters are healthy and continue to provide us with fish—to catch, to eat, to watch, and to thrive now and into the future. This can be achieved through reasonable scientific assessment, adequate enforcement, collaboration in marine management, and—most of all—stewardship and responsible use on the part of all of us.

Attachment

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zadoc W. Brown, Jr. Carl A. Carlson, Jr. David C. Cole Samuel A. Cooke  
Peter H. Ehrman Kenton T. Eldridge Guy Fujimura J. Stephen Goodfellow Thomas Gottlieb James J.C. Haynes Ron Higgins Peter Ho  
Stanley Hong J. Douglas Ing Mark L. Johnson Dr. Kenneth Kaneshiro Bert A. Kobayashi, Jr. Faye Watanabe Kurren Duncan MacNaughton  
Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

Proposed HD 2

**Report Title:**

*Fishing Rights and Regulations*

**Description:**

*Requires the department of land and natural resources to: review its each rules adopted after 01/1/08, concerning lay gill nets and bottomfish the protection and propagation of certain aquatic life or the conservation and allocation of the natural supply of aquatic life; determine whether the rules ~~has~~ are achieving its their intended purpose, the timeframe for achieving their purpose, and the effect on the resource and the public; and submit a report. Sunsets on 12/31/20. (HB2687 HD1)*

HOUSE OF REPRESENTATIVES  
TWENTY-FOURTH LEGISLATURE,  
2008  
STATE OF HAWAII

H.B. NO.

2687  
H.D. 1  
H.D. 2

---

A BILL FOR AN ACT

RELATING TO AQUATIC RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that ~~over the past ten years,~~ the department of land and natural resources is responsible for ~~has~~ adopted ~~ing~~ rules concerning the protection, and propagation, of introduced and transplanted aquatic life, and the conservation, and allocation of the natural supply of aquatic life that have greatly diminished the public's ability to utilize Hawaii's aquatic resources. In ~~s~~Some instances, members of the public ~~have~~s criticized the department of land and natural resources for setting bottom fish area closures, shoreline access boundaries, and other fishing restrictions in an arbitrary manner without scientific evidence to support the department of land and natural resource's position. Other members of the public have requested the department provide greater protections for and limitations on the take of aquatic resources.

The legislature further finds that it is the primary responsibility of the department of land and natural resources

## Proposed HD 2

to protecting our limited natural resources. Carrying out this responsibility must should be balanced with the equally important responsibility of ensuring the public's reasonable use of these resources if such use or activity can be carried out without undue harm to the resources.

The purpose of this Act is to better understand the impacts of aquatic resource and fishing rules in Hawaii by requiring the department of land and natural resources to review the effects of ~~its rules, including~~ its lay gill net and bottomfish management rules, and to determine whether the rules are achieving their intended purposes, the anticipated timeframe for achieving the intended purposes, the effect on the resource, general public, and resource users.

SECTION 2. (a) The department of land and natural resources shall:

(1) ~~Review each rule adopted after January 1, 2008, pursuant to chapters 187A and 188, Hawaii Revised Statutes, concerning the protection and propagation of introduced and transplanted aquatic life or the conservation and allocation of the natural supply of aquatic life in any area, including rules that establish size limits, bag limits, open and closed fishing seasons, specifications and numbers of fishing or taking gear that may be possessed, or that restrict public access to the natural supply of aquatic life, including the effects of its bottomfish management rules (Hawaii Administrative Rules §13-89) and its lay gill net rules (Hawaii Administrative Rules §13-75);~~

(2) Determine whether each rule is achieving its intended purpose;

(3) Estimate the timeframe necessary for each rule to achieve its intended purpose;

(4) Determine the effects of each rule on the health of the resource; and

(5) Determine the effects of each rule on the general public and user groups.

(b) The department of land and natural resources shall submit a report, including an analysis of whether the bottomfish and lay gill net rules are achieving their intended purposes, when they might achieve their intended purposes, and the impact of the rules on the resource, public, and user groups, to the

## Proposed HD 2

legislature no later than twenty days prior to the convening of the 2009 regular session, and every five years thereafter. The department of land and natural resources may include the report as part of its annual report to the legislature.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$            or so much thereof as may be necessary for fiscal year 2008-2009 for the purposes of this Act.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on December 31, 2020; provided that section 3 shall take effect on July 1, 2008.

**TESTIMONY**  
**HB 2687 HD1**  
**(END)**

**TESTIMONY**

**HB 2907**

fax 594-6659



## Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Water and Land

Hearing: Wednesday, March 12, 2008 2:45 pm

Room 414

### Support for HB 2907 Making an Appropriation for Feral Pig Abatement

**Aloha.** The Conservation Council for Hawai'i supports HB 2907, which makes an appropriation to the Hawai'i Department of Land and Natural Resources for pig traps, etc. The DLNR has failed to control the range and numbers of feral and game mammals in Hawai'i. This is a tragedy, and the State must be held liable for the damage these animals cause on public natural area reserves, watersheds, habitats, and recreation areas, as well as private farms, orchards, ranches, gardens, and residences.

The DLNR should provide the staff and equipment to remove feral pigs and other feral and game mammals from private property. Private citizens should not have to foot the bill because of the DLNR's failure to manage game mammals in a responsible manner. I recently had 8 feral pigs removed from my property in 4 days. Hunters helped us out by placing a large cage trap and removing the animals. I am very grateful to these hunters, and have compensated them out of my own pocket. DLNR should reimburse private citizens who have to remove animals from their yards.

The larger issue is getting the DLNR to manage game mammals responsibly. We support any legislation that requires DLNR to develop and implement a plan to control feral pigs and other feral and game mammals statewide. Island-specific plans are needed to address this serious problem. Feral pigs in native forest and watershed are a problem on virtually every island. The federal and state governments took no action for years to control axis deer on Maui when there was a chance to remove them from the island. Now, it is probably too late, and the deer are exploding. Goats are exploding on the Big Island, especially in Kona and Kohala. They occupy native dry forest and other ecosystems, and cause serious erosion and damage to native Hawaiian plants. Goat herds are a regular occurrence along major highways and roadways on the Kona side, and it is only a matter of time before a major accident occurs on the highway because of the goats. Mouflon are also exploding on the Big Island. They are in native forest and watershed, and are a major threat to native species. A colleague recently saw a flock of mouflon with close to 200 animals. She didn't recognize "the line on the horizon" until she was close enough to realize it was a large flock of mouflon. They are also in the Mauna Kea Forest Reserve and are being moved to various parts of the island by private landowners and others for trophy and public hunting. This is tragic. Please require the DLNR to control these animals. Mahalo for the opportunity to testify.

Sincerely,

Marjorie Ziegler



**Working Today for the Nature of Tomorrow!**

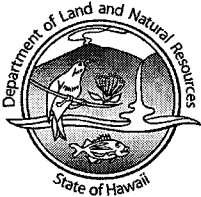
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**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**on House Bill 2907 – MAKING AN APPROPRIATION FOR FERAL PIG ABATEMENT**

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

**March 12, 2008**

House Bill 2907 appropriates unspecified funds to the Department of Land and Natural Resources (Department) for the reduction and abatement of the feral pig population, including the purchase and maintenance of tools and equipment necessary for abatement activities, such as box traps, baits, and corrals. While the Department supports the intent of this measure, it nonetheless has concerns with the fiscal impact this bill will have with funding, on the Executive Supplemental Budget request.

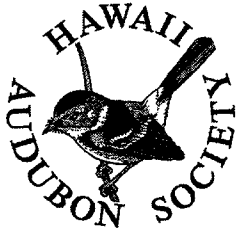
Complaints of feral pigs have increased in some areas in recent years, especially where public hunting is limited. The Department has responded by creating special hunts and opening new areas to allow public hunting to be used to assist the control efforts and working with the Oahu Pig Hunters Association and private landowners to control pigs. Expanded use of trapping methods would increase the success of the program, particularly in urban areas where public hunting must be limited.

Trapping methods can be extremely effective when deployed properly. Department staff are trained in the use of trapping methods and have used these methods effectively in many areas. The Department strives to use public hunting where appropriate, but trapping methods are often needed in cases where public hunting is not safe, feasible, and effective. In addition, the Department has assisted the public by providing training and workshops to landowners that wish to trap feral pigs on their lands.

It's worth noting that while the Department seeks to use public hunting wherever possible, a recent court ruling would prevent the establishment of such special hunts without a time-consuming rule making procedure. House Bill 2956 restores the Department's flexibility to open new seasons, increase bag limits and methods of take, with Board of Land and Natural Resources' action. These mechanisms enable the Department to quickly increase opportunities



for the public to participate in feral pig control and to address pig problems in urban areas, and the Department urges support for that bill (House Bill 2956)



*For the Protection of Hawaii's Native Wildlife*

## **HAWAII AUDUBON SOCIETY**

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**TO: Committee on Water and Land**  
**Senator Clayton Hee, Chair & Senator Russell Kokubun, Vice Chair**

**HEARING: Wednesday, March 12, 2008; 2:45 P.M., Conference Rm. 414**

**Re: HB2907, Making an appropriation for feral pig abatement.**

### **TESTIMONY IN SUPPORT**

Chair Hee and Vice Chair Kokubun, and members of the Committee on Land and Water. On behalf of the Hawai'i Audubon Society I offer this written testimony in support of HB2907. The Hawai'i Audubon Society (HAS), was founded in 1939, and is Hawai'i's oldest conservation group, with over 1,500 dedicated members statewide. The Society's primary mission is the protection of Hawai'i's native birds, wildlife and habitats.

This Hawaiian honeycreeper was only discovered in the rainforest of Maui's Haleakala Volcano in 1973, and yet it probably holds the distinction of being the most endangered bird in the world. This species is now on the verge of extinction, with an apparent population of just three individuals. The exact causes of Po'o-uli's rapid population decline since the species' discovery in 1973, are not well understood at all. However the activities of feral pigs on the Hawaiian Islands have had a devastating impact on the native flora of the region, which in turn has had serious implications for the many unique Hawaiian bird species that evolved together with these plants. In Po'o-uli's current rainforest habitat, feral pigs have wiped out the forest understory in spots; this leads to erosion and disturbance of roots, which results in the death of subcanopy trees.


It is without contradiction that Feral pigs are one of the most destructive animals in the State of Hawai'i. It continues to be a serious threat to our native bird habitats and our native rain forest. Feral pigs are a major factor in rain forest degradation because they destroy native understory, which provides space of invasive species, creates massive erosion of soil and organic matter, and damages tree composition and root systems.

Over the years this degradation of the rain forest has led to the application of several control techniques, including fencing and snaring that this paper recommend for removal of feral pig in native Hawai'i rain forest. Fencing and snaring provided to be the most effective for managing feral pig population because they limit the dispersal of feral pig as well as remove of large number of pigs.

Making an appropriation to DLNR for feral pig abatement is both prudent and propitious. Unless controlled feral pigs with continue to destroy critical forest areas and along with it bird habitat. The Hawai'i Audubon Society urges the committee to vote to pass HB2907, for final hearing before the Committee on Ways & Means.

Thank you for the opportunity to submit testimony here today.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Massengale', written in a cursive style.

George Massengale, JD  
Legislative Analyst

**TESTIMONY**

**HB 2907**

**(END)**