

LATE TESTIMONY



LAND USE RESEARCH
FOUNDATION OF HAWAII
700 Bishop Street, Ste. 1928
Honolulu, Hawaii 96813
Phone 521-4717
Fax 536-0132

Via: WLOtestimony@Capitol.hawaii.gov

February 4, 2010

Recommendation to Defer HB 1882 Relating to Shoreline Setback **(Prohibits inclusion of accreted lands)**

The Honorable Representative Ken Ito, Chair and Vice-Chair Sharon Har
and Members of the House Committee on Water, Land & Ocean Resources:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

LURF supports the intent of HB 1882, however, we must provide our concerns and are **opposed to the current form of HB 1882, and respectfully recommend that HB 1882 be deferred at this time.** LURF is opposed to the current version of this HB 1882, and request deferral, based on, among other things, the following:

- **It will be unenforceable.** The current language of the bill will lead to confusion (and maybe even lawsuits), because it does not include a sufficient description of how the "accreted lands" will be determined, or where the shoreline setback would be measured from, or reference to any "baseline" for determining the location of accreted lands.
- **Wait for the DLNR/UH Study on Kailua Beach.** With all due respect, the legislature does not have the expertise regarding shoreline matters. We understand that the Department of Land and Natural Resources (DLNR) is working with the University of Hawaii (UH) and private consultants on a project to create a long-term, comprehensive management plan for Kailua Beach. The Management Plan will be vetted through both the local community and the City and County (City) Department of Planning and Permitting (DPP), to assure its efficacy as a resource and location based document.
- **Possible unconstitutional taking of private property?** Given the lack of definition and specificity regarding the determination of the accreted lands, changing the setback line by this legislation, by suing its vague provision "or twenty feet from any accreted lands along the shoreline, whichever is greater." could result in the unconstitutional taking of property without compensation.
- **Does not address unique shoreline conditions.** establishing a fixed setback line by statute does not allow for unique situations where the setback may not be warranted

(such as rocky or hardened and established shorelines).

- **Honor counties' home rule.** Instead of prescribing a minimum setback area (as required in this bill), the Legislature should honor and respect the setbacks established by the Counties based on their historic erosion rates in a particular area or the distinctive shoreline and topography of each County.
- **The bill is limited only to Oahu.** We do not understand why the bill is limited to Oahu. The introductory text of the bill mentions Kailua Beach (where the DLNR and UH are doing their study, but other than that, there is no information or justification to impose this law only on Oahu. The natural processes of accretion and erosion are not limited to Oahu, and occur on all islands and counties in Hawaii.

Thank you for the opportunity to express our views on this matter.

**Kailua Neighborhood Board
P.O. Box 487
Kailua, Hawai'i 96734**

**Water, Land and Ocean Resources
Committee Chair Ito
Committee members**

**HB 1882
Relating to Shoreline Setback**

At the 2/4/10 Kailua Neighborhood Board meeting the Board passed the following motion.

The Kailua Neighborhood Board supports the basic premise of HB 1882

Hardening of the shoreline has been a long standing issue and problem in Kailua especially in Lanikai. With passage of this motion the Board feels that shoreline setbacks of not less than twenty feet from the shoreline, or twenty feet from any accreted lands on the shoreline, whichever is greater is reasonable and responsible coastal resource protection and good land use planning.

Sincerely,

Chuck Prentiss, Chair