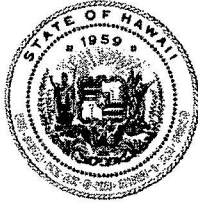
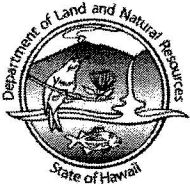


LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committees on
ENERGY and ENVIRONMENTAL PROTECTION
and
WATER, LAND, & OCEAN RESOURCES**

**Tuesday, February 9, 2010
9:15 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2960
RELATING TO THE ENVIRONMENT**

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

RUSSELL Y. TSUIH
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

Bill No. 2960

Support **Y**

Date 2/8

Time 1441

Cat AF AS AX B C

Type 1 WI

The purpose of House Bill 2960 is to provide an exemption to Chapter 343, Hawaii Revised Statutes, for qualified actions that protect, preserve or enhance the environment. The Department of Land and Natural Resources (Department) opposes this measure in its current form, and provides an alternative means to more effectively achieve the intent of this bill.

The Department, as well as it's many public and private partners, annually spend substantial amounts of money and staff time preparing environmental assessments for conservation projects on lands set aside for conservation including fencing for control of feral animals, field stations and work camps, and dip tanks for fire control. The Department supports efforts to streamline the process of implementing these environmentally friendly projects so that funding can be focused on implementation of on-the-ground management. However, it appears this bill, rather than reducing the burden on conservation projects, actually may increase it by creating a duplicate and administratively complex and unclear process.

A more preferred approach would be to create a new exemption class in Chapter 343, Hawaii Revised Statutes, for conservation projects available to both public and private entities to streamline the process.

Bill No. 2960
Support Y N
Date 2/8
Time 1657
Cat AF AS AX B C
Type 1 2 WI



HB 2960
RELATING TO THE ENVIRONMENT
House Committees on Energy & Environmental Protection
and Water, Land & Ocean Resources

February 9, 2010

9:15 a.m.

Room: 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB2960, which provides an exemption from an environmental assessment for projects that protect, preserve and enhance the environment, land, or natural resources, under certain conditions and requires the Environmental Council to make a determination whether the exemption should be granted after a public hearing.

OHA has always been a strong advocate for and defender of the Hawaii Environmental Protection Act (HEPA). HEPA, as represented by Hawaii Revised Statutes (HRS), Chapter 343, the Environmental Impact Statement Law, is a critical tool that OHA uses to fulfill our Constitutional and Legislative mandates to advocate for the betterment of conditions of Native Hawaiians. Environmental resources include natural and cultural resources. Adverse impacts to environmental resources are equal to adverse impacts to Native Hawaiians. For us, a departure from HEPA potentially cripples OHA's (and the rest of the public's) ability to perform our duties and mandates to advocate for the protection of these resources and conduct advocacy efforts for native Hawaiians and Hawaiians.

OHA notes that pursuant to Act 1, Session Laws of Hawaii 2008, a report was recently submitted to the Legislature that examines the changes in Hawai'i's environmental review system. OHA urges that the Legislature follow up on the recommendations made in this report.

Further, we do not support the ideas found in this bill because the bill does not refocus or streamline our current environmental review system but rather adds additional and unnecessary steps to it. We also point out the despite the dedication of the members of the environmental council, it has been described in the above mentioned report to the Legislature as being "dysfunctional and, since July 2009, has suspended all meetings." As such, OHA does not recommend placing such an important determination as to whether an action

qualifies for the proposed environmental assessment exemption in the council's shackled hands.

Therefore, OHA urges the Committee to HOLD HB 2960. Thank you for the opportunity to testify.



The Nature Conservancy
Hawai'i Program
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Bill No. 2960

Support Y N X

Date 2/8

Time 1427

Cat AF AS AX B C

Type 1 2 WI

Testimony of The Nature Conservancy of Hawai'i
Supporting the Intent of H.B. 2960 Relating to the Environment
House Committee on Energy and Environmental Protection
House Committee on Water, Land and Ocean Resources

The Nature Conservancy (TNC) supports the intent of H.B. 2960, particularly the goal of streamlining the environmental review process for projects that will be beneficial to the environment. However, an unintended result is that the bill may actually result in additional burdens on a conservation project manager if its provisions do not take into consideration the Department of Land & Natural Resources' (DLNR) planned updates to the Conservation District Use Application (CDUA) and Permit (CDUP) process, which is also seeking to ease regulatory burdens on beneficial projects.

Conservation work that protects, preserves, or enhances the environment, land, and natural resources is often caught up in the same time consuming and expensive environmental assessment process as projects that have negative impacts on the environment. While it is appropriate that higher protection is afforded to lands with conservation value, e.g., lands in the State Conservation land use district, it often comes at a stroke too broad that does not distinguish between constructing residential homes versus engaging in conservation work to protect native forests. Currently, many beneficial conservation actions have to go through the same expensive level of review for environmental impacts as development.

Environmental review under Hawai'i Revised Statutes Ch. 343 for TNC's conservation work has been a significant burden:

- Each Environmental Assessment (EA) takes 6-12 months;
- Each EA takes ~1 FTE (part of 2-4 people's time);
- Each EA costs \$100,000-\$200,000;
- TNC has done 15 EAs in the last 15 years;
- Five of our preserves have had two EAs each;
- One preserve is getting its third EA for conservation work.

In addition to HRS Ch. 343 environmental review, conservation projects like predator control fences on private lands in the State Conservation land use district must also submit a Conservation District Use Application (CDUA) to the DLNR to obtain a Conservation District Use Permit (CDUP) for the project. The current Hawai'i Administrative Rules for Conservation Districts (HAR Title 13-5) require that a CDUA include an EA or an EIS (HAR §13-5-31(1)) as well as have a public hearing (HAR §13-5-40(3)). However, the DLNR is proposing significant positive amendments to these rules for conservation work on private land in the Conservation district, such as not requiring a CDUP for invasive species control, and streamlining and easing the permit requirements for predator fencing by seeking to limit the circumstances where an EA and public hearing would be required. See, <http://hawaii.gov/dlnr/chair/meeting/submittals/100211/K-OCCL-Submittals-K1.pdf>

While the DLNR's CDUA process under the proposed amendments to HAR §13-5-31(1) may ease the regulatory burden on beneficial conservation projects, the unintended consequence of H.B. 2960 may be to put some of that burden back on, at least with respect to additional process to secure an EA exemption for certain conservation work on private lands.

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Bill No. 2960

HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES

Representative Ken Ito, Chair
Representative Sharon E. Har, Vice Chair

Support Y N

Date 2/8

Time 1519

Tuesday, February 9, 2010
Conference Room 325
9:15 AM

Cat AF AS AX BC

Type 1 2 WI

House Bill 2960
Relating to the Environment

Testimony submitted by
Bob Loy, Director of Environmental Programs,
The Outdoor Circle

This testimony is respectfully submitted in opposition to HB 2960

HB2960 is designed to streamline the approval process for projects that purport to protect, preserve and enhance the environment, land or natural resources. While the intention is worthy of consideration, we believe that this legislation could open the door to unintended consequences that might not be raised or adequately addressed by the Environmental Council (EC) public hearing process outlined in the current draft.

Sometimes projects that appear to meet the test of protecting the environment create unacceptable environmental damage in the process. A perfect example of this possibility currently exists on the Big Island of Hawaii with a project called the Waimea Trails and Greenways. The project proposes to create a green corridor through the heart of Waimea along the Waikoloa Stream that will provide an accessible connecting pathway between residences, businesses & schools. The project has community support and the sponsors are now attempting to require the necessary easements to move forward. While this project is laudable we believe it may come at far too high of an environmental cost.

The cost would come at the expense of the popular Waimea Nature Park—Ulu La'au. The name Ulu La'au means "Garden of Trees". The park is a 10 acre parcel of State land in the heart of Waimea town, leased by Waimea Outdoor Circle for environmental research, education and restoration. It is heavily used by students and residents from the region, as well as visitors. The problem is that the Waimea Trails and Greenways project will cut through the park. If built, the trail would be required to be wide enough to be accessed by emergency vehicles such as ambulances. As a result, this well-intentioned project would cause the removal of literally hundreds of trees and the virtual decimation of the Waimea Nature Park—the "Garden of Trees."

While we agree that if HB2960 becomes law these facts would doubtlessly be presented at a public hearing held by the Environmental Council and the exemption might not be granted. However, a more formal Environmental Assessment of Environmental Impact Statement would be far more likely to comprehensively involve the public and force the kind of analysis that would result in a true accounting of the impacts of the project.

Of equal concern is the tenuous existence and uncertain future of the Environmental Council itself. Due to a variety of factors that are now being widely discussed at the legislature, the EC has not met for more than six months. Neither the EC nor the Office of Environmental Quality Control (OEQC) has the financial and other state support necessary to properly fulfill current obligations, much less create rules and implement the mandates of HB2960.

While we support the good intentions of HB2960, we urge you to reject it. Instead we ask the legislature to focus on rehabilitating the EC and OEQC and allow existing State and Federal environmental laws to determine the type of review required for projects that affect the environment of Hawaii.



Sierra Club Hawai'i Chapter

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Bill No. 2960

Support Y N

Date 2/8

Time 1722

Cat AF AS AX BC

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES Type 1 WI

February 9, 2010, 9:15 A.M.

(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO HB 2960

Aloha Chair Morita, Chair Ito, and Members of the Committee:

The Hawai'i Chapter of the Sierra Club opposes HB 2960, which would remove a project that "protects, preserves, or enhances the environment, land, and natural resources" from state environmental review. While we strongly support the intent of this bill, we believe this measure may have unintended consequences and is legally unnecessary.

Our current environmental review process already has a means to exempt all projects -- not just beneficial ones -- that have little or no impacts on the environment. The exemption process is a tried and true process that works in many states and under the federal NEPA process. We suggest giving the suggestions made by the UH team an opportunity to be vetted and worked through. This may create a better system for environmentalists and developers alike.

We remain concerned that the operative phrase in this measure may create a loophole in the environmental review process. Determining what actions "will have minimal or no significant negative effects on the environment" without the usual appeal rights may create problems. Further, the enhanced public hearing and notice requirements may create an additional (and unintended) burden.

We suggest strengthening the already-existing exemption process may be the best process for handling this perceived problem.

Thank you for the opportunity to offer this testimony.