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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
WATER & LAND

Thursday, February 2, 2023
9:30 AM
State Capitol, Conference Room 430

In consideration of
HOUSE BILL 328
RELATING TO CONSERVATION MITIGATION BANKS

House Bill 328 proposes to authorize the Department of Land and Natural Resources (Department) to establish and operate conservation mitigation banks to restore, create, enhance, or preserve conservation habitats or resources as compensatory mitigation. This bill also proposes to authorize the Department to contract a third-party administrator for the operation of the mitigation banks, clarifies the sale of credits involved in conservation mitigation banking, and defines "conservation mitigation bank." **The Department of Land and Natural Resources (Department) acknowledges the intent of this measure and offers amendments.**

The Department recognizes the need to authorize the Department and third-party administrators to establish and operate conservation banks for compensatory mitigation to mitigate the impacts to threatened and endangered species from approved incidental take associated with Habitat Conservation Plans and Incidental Take Licenses. The Department makes recommendations to the Board of Land and Natural Resources on whether to issue temporary Incidental Take Licenses for threatened or endangered species as part of Habitat Conservation Plans, where incidental take of a threatened or endangered species may occur while a licensee is carrying out an otherwise lawful activity. The Habitat Conservation Plans must include provisions to minimize and mitigate the impacts of take to the maximum extent practicable. One method to provide mitigation is by contributing to a conservation bank. A conservation bank is a site established under a legal instrument for the purposes of conserving and managing to provide ecological functions and services expressed as credits for listed species. With compensatory mitigation, multiple Incidental Take Licensees would be able to pay for listed-species conservation activities within a conservation bank.

Under federal law, conservation banks are established under a conservation bank instrument that protects the land from development in perpetuity, such as a conservation easement or other method approved by the United States Fish and Wildlife Service. Federal conservation banks are conserved and managed to provide ecological functions and services expressed as credits for a specific threatened or endangered species, candidate species, or other at-risk species.

The Department notes that the proposed bill, as drafted, would conflict with Hawaii Revised Statutes (HRS) §§ 187A-41 and 42, because the definition of “conservation mitigation bank” in the proposed bill does not exclude aquatic habitat. HRS §§ 187A-41 and 42 authorize the Department to establish and operate aquatic mitigation banks and aquatic in-lieu fee mitigation programs for the purpose of restoring, creating, enhancing, preserving aquatic habitats or resources where a person is required to provide compensatory mitigation under certain circumstances; and draft administrative rules for the purposes of this part of Chapter 187A, HRS. Typically, but not exclusively, “mitigation banks” refer to aquatic habitats and species and “conservation banks” refer to terrestrial habitats and species.

The Department suggests amending the bill to provide the Department authority to establish and operate conservation banks:

Section 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

CONSERVATION [MITIGATION] BANKS

§ -1 **Conservation [mitigation] banking.** The department [of land and natural resources] is authorized to establish and operate conservation [mitigation] banks, the purpose of which shall be to restore, create, enhance, or preserve [conservation] species, their habitats, or resources as compensatory mitigation where the issuance of an [person or entity] incidental take license [is] require[d]s the licensee [to] provide [compensatory] mitigation [prospectively] as part of a habitat conservation plan and the use of banked mitigation is approved

by the agency requiring mitigation, or for past damages to conservation habitats or resources.

§ -2 Definitions. As used in this chapter:

"conservation bank" means a site established under a conservation bank instrument approved by the department that is conserved and managed to provide ecological functions and services expressed as credits for wildlife or listed species.

"conservation bank instrument" means an interest in real property that protects a conservation bank in perpetuity, such as a conservation easement, deed restriction, condition, or covenant.

"credit" means a value based on defined units representing the accrual or attainment of ecological functions or services at the conservation bank and released as the conservation bank meets performance criteria.

"department" means the department of land and natural resources.

"habitat conservation plan" means a plan developed pursuant to sections 195D-4 and 21, HRS.

"incidental take license" means a temporary license issued by the board of land and natural resources as part of a habitat conservation plan that allows take of a threatened or endangered species that is incidental to and not the purpose of the carrying out of an otherwise lawful activity.

"wildlife" means any non-domesticated member of the animal kingdom, whether reared in captivity or not, including any part,

product, egg, or offspring thereof, except aquatic life as defined in Chapter 195D, Hawaii Revised Statutes.

§ -~~[2]~~3 Conservation ~~[mitigation]~~ banking administrator.

The department ~~[of land and natural resources]~~ may contract with a third-party administrator that specializes in ~~conservation~~ ~~[mitigation]~~ banking to operate and manage the ~~conservation~~ ~~[mitigation]~~ banks in section -1.

§ -~~[3]~~4 Conservation ~~[mitigation]~~ bank; sale of credits.

(a) A conservation bank shall be established under a legal ~~conservation bank instrument.~~

(b) The department may sell credits generated from listed-species conservation activities to incidental take licensees.

(c) ~~[Investors]~~ ~~Third-party conservation bank administrators~~ ~~[in a conservation mitigation bank]~~ shall not be required to own the parcel of land and ~~[shall]~~ may be authorized by the department to sell the credits ~~[generated from the ecological conditions to persons or entities that need the credits to compensate for environmental impacts that they have caused]~~.

§ -~~[4]~~5 Rules. The department ~~[of land and natural resources]~~ may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter.

~~[\$ - 5 Definition. As used in the chapter, "conservation mitigation bank" means a parcel of land managed to restore or maintain certain ecological conditions, including a functional wildlife habitat and the presence of endangered species, for a~~

~~set time period. The term "conservation mitigation bank" may refer to mitigation activity for both species and habitats and shall be analogous to habitat bank and biodiversity bank.]~~

Mahalo for the opportunity to comment on this measure.

HB-328

Submitted on: 2/1/2023 6:51:53 AM

Testimony for WAL on 2/2/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Virginia Tincher	Individual	Support	Written Testimony Only

Comments:

Chair Ichiyama, Vice Chair PoePoe and committee members,

Mahalo Chair Ichiyama and Vice Chair PoePoe and others for introducing this bill to support another step forward in climate mitigation in Hawaii and to support those who will use conservation mitigation banks.

These important steps will add up and facilitate climate mitigation.

Mahalo,

Virginia Tincher

Aina Haina, Oahu

HB-328

Submitted on: 2/1/2023 10:02:06 AM

Testimony for WAL on 2/2/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Thorne Abbott	Individual	Support	Written Testimony Only

Comments:

I strongly support the intent of the bill. However, it should be broadened to fund adaptive realignment and/or managed retreat of oceanfront residential homes and commercial buildings away from erosion and/or flood prone areas. A mitigation bank should serve as a market-based mechanism to fund and/or facilitate relocation of structures that are exposed to coastal hazards such as sea level rise and/or chronic coastal erosion.

HB-328

Submitted on: 2/1/2023 7:43:16 PM

Testimony for WAL on 2/2/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Andrea Nandoskar	Individual	Support	Written Testimony Only

Comments:

Support!