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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

**Transmittal Cover Sheet for**  
**Department of Land and Natural Resources Testimony**

**Date Submitted: February 4, 2009**

**Testifier's Name/Position/Title: Paul Conry, Forestry and Wildlife Division Administrator**

**Committee the comments are directed to: HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION**

**The Date & Time of Hearing: Thursday, February 5, 2009  
9:00 AM, Conference, Room 325**

**Measure Number: HB 389 RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW**

**Number of Copies the Committee is Requesting: In paper, 5 copies (including original) to Room 317 in the State Capitol**

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GOVERNOR OF HAWAII



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DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the House Committee on  
ENERGY & ENVIRONMENTAL PROTECTION**

**Thursday, February 5, 2009  
9:00AM**

**State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 389  
RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT LAW**

House Bill 389 would amend Section 343-5, Hawaii Revised Statutes - "The Environmental Impact Law" by adding a new trigger for any proposed development on lands with an average slope of twenty per cent or more". The Department of Land and Natural Resources (Department) supports the concept to avoid unintended consequences from activities undertaken on land which is steep or prone to rockfall, landslide or mass wasting, but prefers the approach proposed in the Administration's House Bill 1140, RELATING TO LAND FAILURE.

House Bill 1140 (RELATING TO LAND FAILURE) takes a comprehensive planning approach to development in hazardous areas. House Bill 1140 would require precautionary actions imposed by the counties for development in potentially hazardous areas; it removes the liability of landowners regarding natural conditions on their land that cause damage outside the land; and it gives government agencies the authority to mitigate or require mitigation of land failure hazards on private property. Section 4 of House Bill 1140 would require a study or hazard assessment prior to issuing development permits or approvals for development on areas with a slope of 20% or greater that pose or may pose a hazard to any person or structure on or adjacent to the subdivision or project site. The approach taken in Section 4 of House Bill 1140 achieves the intent to do the level of planning required to protect human life and property, and the Department believes that this can be achieved considerably faster and more cost effectively than requiring a full environmental assessment for all developments on land greater than 20% slope, as called for in House Bill 389.

LAURA H. THIELEN  
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**BIA-HAWAII**  
 BUILDING INDUSTRY ASSOCIATION  
 February 5, 2009

Representative Hermina Morita, Chair  
 HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION  
 State Capitol, Room 325  
 415 South King Street  
 Honolulu, Hawaii 96813

Dear Chair Morita: and Members of the Committee:

**Subject: House Bill No. 389 Relating to Environmental Impact Statement Law**

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII is in strong opposition to H.B. No. 389 as proposed.

The proposed legislation would amend Chapter 343 HRS and require an environmental assessment for any development on lands with an average slope of 20% or greater.

It is our understanding that when Act 246, SLH 1974 was passed and established Chapter 343 HRS, the legislation reflected an understanding that all public actions would require an environmental impact statement/assessment which is reflected in item No. 1 of the EIS/EA triggers. The legislation was intended to identify specific areas where an EIS/EA would be required for private uses.

The underlying intent was that the law would require government give systematic consideration to the environmental, social and economic consequences of proposed development projects prior to allowing construction to begin. The law also assures the public the right to participate in planning projects that may affect their community.

A land use or activity may trigger EA/EIS if it is one of the 9 listed in 343, unless the program or project is declared exempt. Any action that proposes:

1. Use of state or county lands or the use of state or county funds;
2. Use within any land classified as conservation;
3. Use within a shoreline area;
4. Use within a designated National Register or Hawaii Register historic site;
5. Use within the "Waikiki Special District";
6. Amendments to existing county general plans to urban, except for amendments to any existing county general plan initiated by a county;
7. Reclassification of any conservation lands;
8. Construction of new or modification of existing helicopter facilities that may affect:
  - a. Any land classified as a conservation;
  - b. A shoreline area; or

- c. Any use of National or Hawaii Register historic site, or any historic site that is under consideration for placement on the National or the Hawaii Register of Historic Places; and,
- 9. Any of the following:
  - a. Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
  - b. Waste-to-energy facility;
  - c. Landfill;
  - d. Oil refinery; or
  - e. Power-generating facility.

Currently, Chapter 343 HRS provides for a distinction between discretionary and ministerial consents (approvals). §343-2, Definitions provides the following:

"Approval" means a discretionary consent required from an agency prior to actual implementation of an action.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

The distinction is between discretionary and ministerial consents indicates that the Chapter 343 HRS was never intended to be applied to ministerial consents (approvals) such as subdivisions, building permits, meter hook-ups, etc. The disclosure process outlined in Chapter 343 HRS was intended to be done in general at the zoning stage or was limited over time to specific actions or activities.

That is why the appropriate place to trigger Chapter 343 for an EA is at the first "discretionary consent" such as County Zoning or reclassification of lands by the State Land Use Commission. Then the EA is done prior to the ministerial consents such as subdivision, building permit, meter hook-ups, etc.

Since 1974, the Courts have expanded the interpretation of the law such that an action that involves any government owned road right of way would trigger Chapter 343 no matter if the action was ministerial in nature such as a utility or driveway (ingress/egress) connection. We do not believe the legislature intended the Chapter 343 requirement for ministerial type actions.

The Chapter 343 process should remain a public disclosure process that identifies impacts and mitigation measures to be considered by agencies in rendering their "discretionary" decisions. To apply this process to any use of lands of 20% slope or more regardless of the zoning or permit required (ministerial or discretionary) would create unnecessary confusion and uncertainty in the land use entitlement and permitting process.

This proposal suggests that the Chapter 343 document and process be viewed as another layer of permitting. We do not believe that this was the intent of the law. The existing process produces a disclosure document for consideration by the agency assessing the discretionary permit.

We strongly recommend that H.B. No. 389 be held.  
Thank you for the opportunity to provide comments.



February 4, 2009

Representative Hermina Morita, Chair  
 HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION  
 State Capitol, Room 312  
 415 South King Street  
 Honolulu, Hawaii 96813

Dear Chair Morita:

**Subject: House Bill No. 389 Relating to Environmental Impact Statement Law**

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii is in strong opposition to H.B. No. 389 as proposed.

The proposed legislation would amend Chapter 343 HRS and require an environmental assessment for any development on lands with an average slope of 20% or greater.

It is our understanding that when Act 246, SLH 1974 was passed and established Chapter 343 HRS, the legislation reflected an understanding that all public actions would require an environmental impact statement/assessment which is reflected in item No. 1 of the EIS/EA triggers. The legislation was intended to identify specific areas where an EIS/EA would be required for private uses.

The underlying intent was that the law would require government give systematic consideration to the environmental, social and economic consequences of proposed development projects prior to allowing construction to begin. The law also assures the public the right to participate in planning projects that may affect their community.

A land use or activity may trigger EA/EIS if it is one of the 9 listed in 343, unless the program or project is declared exempt. Any action that proposes:

1. Use of state or county lands or the use of state or county funds;
2. Use within any land classified as conservation;
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4. Use within a designated National Register or Hawaii Register historic site;
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8. Construction of new or modification of existing helicopter facilities that may affect:
  - a. Any land classified as a conservation;
  - b. A shoreline area; or
  - c. Any use of National or Hawaii Register historic site, or any historic site that is under consideration for placement on the National or the Hawaii Register of Historic Places; and,
9. Any of the following:

- a. Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
- b. Waste-to-energy facility;
- c. Landfill;
- d. Oil refinery; or
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The Chapter 343 process should remain a public disclosure process that identifies impacts and mitigation measures to be considered by agencies in rendering their "discretionary" decisions. To apply this process to any use of lands of 20% slope or more regardless of the zoning or permit required (ministerial or discretionary) would create unnecessary confusion and uncertainty in the land use entitlement and permitting process.

This proposal suggests that the Chapter 343 document and process be viewed as another layer of permitting. We do not believe that this was the intent of the law. The existing process produces a disclosure document for consideration by the agency assessing the discretionary permit.

We strongly recommend that H.B. No. 389 be held.

Thank you for the opportunity to provide comments.



# Hanalei Watershed Hui

February 4, 2009

Testimony in Support: HB 389  
Committee EEP  
February 5, 2009  
Room # 312; 9:00 am

Aloha Committee Members,

The Hanalei Watershed Hui supports this legislation. Our organization is a Hawaii nonprofit that works to restore and protect the natural and cultural resources of Halele'a on Kaua'i.

Much of our recent effort has been focused on reducing sediment in the auwai and rivers of Hanalei.

This legislation will support our work to better understand and address the impacts of drainage and sediment production.

The impacts of sediment are directly responsible for the degradation of our near shore fishery and reef ecosystems.

We strongly support passage of HB 389.

Me ka pono,

Makaala Kaaumoana



*For the Protection of Hawaii's Native Wildlife*  
**HAWAII AUDUBON SOCIETY**

850 Richards Street, Suite 505, Honolulu, HI 96813-4709  
Phone/Fax: (808) 528-1432; hiaudsoc@pixi.com  
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**House Committee on Energy & Environmental Protection**  
**Rep. Hermina M. Morita, Chair & Rep. Denny Coffman, Vice Chair**

**Thursday, February 5, 2009; 9:00 A.M., Conference Rm. 325**

**Re: Testimony in Support of HB389, Relating to the Environmental Impact Statements Law.**

My name is George Massengale and I a member of the Hawaii Audubon Society, during session I also serve as their Legislative Analyst. Thank you for another opportunity to submit our **testimony in support of HB389.**

I previously noted that the Hawaii Audubon Society was founded in 1939, and has over 1,500 members statewide. The Society's primary mission is the protection of Hawaii's native wildlife and habitats. We believe that Environmental Impact Statements (EIS) play a critical role in providing wildlife and habitat protection.

Several times a year we see or hear stories in the news regarding boulders and sliding hillsides. We believe that if an EIS had been prepared in most these situations damage to homes, property as well as hillside habitat may have been avoided.

With regards to HB389 requiring an EIS for slopping conditions with an average of twenty per cent or greater is we believe, well within the "rule of reason standard," which is based on the common law reasonable person standard. For the purposes of preparing an EIS, it would have the individual consider any activity sufficiently significant to warrant further discussion, if so, it should be included in the environmental impact statement.

Thank you for the opportunity for me to testify here today.

Sincerely,

George Massengale, JD  
Legislative Analyst