

LINDA LINGLE
GOVERNOR OF HAWAII



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

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KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
WATER, LAND, & OCEAN RESOURCES**

**Monday, February 2, 2009
9:00 a.m.**

State Capitol, Conference Room 325

**In consideration of
HOUSE BILL 951
RELATING TO LANDOWNER LIABILITY**

House Bill 951 relieves landowners of liability for any damages, injury, or harm to persons or property outside the boundaries of the landowner's land caused by naturally occurring land failure originating on unimproved land. The Department of Land and Natural Resources (Department) supports efforts to provide conditional protection from liability for private and public landowners regarding land failures as a result of natural conditions on their lands that cause damage outside the land. This bill duplicates Section 4 of House Bill (H.B.) 1140, which takes a more holistic approach to dealing with the issues of land failures, not just the issue of landowner liability.

This bill and Section 4 of H.B. 1140, preserves the State's natural beauty for future generations by protecting and preserving large tracts of public and private lands in their original condition and natural state. Due to the vast amount of unimproved lands, and the state policies to maintain these lands in their natural state, dangerous natural conditions occur throughout the State that could expose landowners to liability. Urban sprawl and zoning approvals by county agencies have allowed urban and residential development to expand into and adjacent to many areas susceptible to land failure or rockfall hazards. The Department, other state and county agencies, and private landowners are increasingly being called upon to mitigate reported hazards occurring in natural conditions on their unimproved lands.

For private landowners, many of these lands are conservation lands - not appropriate for development - and continued exposure to lawsuit or requests to mitigate or compensate for harm or injury caused on unimproved lands from naturally occurring natural conditions may force many landowners to sell or develop these lands to cover liabilities, or sell or turn over lands to the State or other government entities to avoid and shift liability to the general public. The

typical cost for rockfall mitigation projects usually runs in the millions. By example, the current estimated costs for Komo Mai hillside and the Old Puunui Quarry projects are \$2,100,000 and \$1,760,000, respectively. If either case had involved an incident resulting in injury or death, the litigation and judgment costs alone would have far exceeded the mitigation costs and seriously impacted the State's fiscal health. Dwindling state resources cannot correct these hazards triggered by unwise urban sprawl.

A limited tort liability exemption for the State was created by Act 82, Session Laws of Hawaii 2003, for harm or injury caused on improved public lands (basically, state and county parks and the statewide trail and access system). The existing tort liability exemptions may not adequately address or apply to the scenario where a dangerous condition originating from public lands is the cause of damage, injury, or harm on adjacent or nearby properties. Act 82 does not cover liability on private property. This bill will protect owners of unimproved land from these liabilities and help to keep these lands in conservation in their natural state.

The Department recommends that the Committee consider the even more holistic approach to dealing with the issues of land failures contained in Administration bill, H.B. 1140. H.B. 1140 proposes three actions to address land failure problems, 1) requires a developer to assess land failure risks in potentially hazardous areas and provide appropriate buffers or mitigation and notice of the risk before county approval processes (a similar approach as in this bill); 2) provides conditional protection from liability for private and public landowners regarding from land failures as a result of natural conditions on their lands cause damage outside the land; and 3) gives government agencies the authority to mitigate or require mitigation of land failure hazards on private property.

The Department supports providing conditional protection from liability for private and public landowners from land failures as a result of natural conditions on their lands that cause damage outside the land. We prefer the more holistic approach in H.B. 1140.

H. B. NO. 1140

A BILL FOR AN ACT

RELATING TO LAND FAILURE.

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

1 SECTION 1. The State's natural beauty is preserved for
2 future generations by efforts to protect and preserve state
3 lands in its original condition, and also in significant part,
4 by the cooperation of private landowners who own and maintain
5 large tracks of pristine lands in its natural state. For
6 private landowners, many of these lands are conservation lands
7 and not appropriate for development. Continued exposure to
8 lawsuit or requests to mitigate or compensate for harm or injury
9 caused on unimproved lands may force many landowners to sell or
10 develop these lands to cover liabilities, or sell or turn over
11 lands to the State or other government entities to avoid and
12 shift liability to the general public.

13 Due to the vast amount of unimproved lands, and the state
14 policies to maintain these lands in their natural state,
15 dangerous natural conditions occur throughout the State that
16 could expose landowners to liability. Resources to conduct a
17 thorough assessment of the risk on all lands are not available.

H.B. NO. 1140

1 Additionally, expansion of urban sprawl and zoning approvals by
2 county agencies have allowed urban and residential development
3 to expand into and adjacent to many areas susceptible to land
4 failure or rockfall hazards. Many of the valley walls adjacent
5 to established and proposed subdivisions in the State are
6 extremely steep and susceptible to land failure. As the State's
7 population grows and the pressure for development increases, the
8 lack of open areas will force development into areas with
9 natural hazards that threaten the safety of future homeowners
10 and the general public.

11 Unbudgeted expenditures to mitigate these types of hazards
12 can eventually cripple the State's operational budget by
13 diverting critical funds, needed to sustain its core functions,
14 to costly emergency mitigation projects. This fact is
15 exacerbated by the difficult downturn in the state and national
16 economy that threatens essential services and jobs. The typical
17 cost for rockfall mitigation projects usually runs in the
18 millions. By example, the current estimated costs for Komo Mai
19 hillside and the Old Puunui Quarry projects are \$2,100,000 and
20 \$1,760,000, respectively. If either case had involved an
21 incident resulting in injury or death, the litigation and

1 judgment costs alone would have far exceeded the mitigation
2 costs and seriously impacted the State's fiscal health.

3 Land failure hazards on private lands pose a unique public
4 safety issue for down slope landowners and the general public.
5 An owner of private property that is found to contain a land
6 failure hazard is likely to take no action in hopes that nothing
7 will happen during the owner's tenure of ownership. It is
8 unclear whether and how such owner can be compelled to address
9 the hazard and ensure the safety of the threatened nearby
10 property owners and the general public under existing laws.
11 Clarifying the authority of government agencies to intervene in
12 such situations and require action by the owner of the property
13 with the land failure hazard, or both, and providing for sharing
14 of the costs among affected property owners, establishes a
15 reasonable solution that will not bankrupt the State while
16 promoting public safety.

17 The legislature believes a more comprehensive and proactive
18 approach to managing risk of harm to the public from land
19 failure hazards is needed to address those concerns. The
20 legislature finds that those threats to public safety can and
21 should be controlled at the time of development or new
22 construction. The legislature also finds that it is in the

1 public's interest to promote the retention and preservation of
2 unimproved lands that enhance the natural beauty of the State by
3 limiting liability for harm from land failure hazards that occur
4 on unimproved lands. The legislature further finds that it is
5 also in the public's interest to allow government agencies to
6 mitigate or require the mitigation of land failure hazards on
7 private lands that are at risk of causing imminent harm or
8 damage to nearby properties or the general public, and to assess
9 the costs for such mitigation to those property owners
10 benefiting directly from such action on a pro rata basis.

11 The purposes of this Act are to:

- 12 (1) Provide a reasonable and affordable means to ensure
13 that future urban expansion and new construction will
14 not add to the ongoing problem of rockfall and
15 landslide hazards in populated areas;
- 16 (2) Alleviate the need for the landowners, and the
17 department of land and natural resources in
18 particular, to exhaust their funds and resources on
19 the task of mitigating risks associated with naturally
20 occurring hazardous conditions, and to allow the
21 department of land and natural resources to focus them

1 on its primary mission of managing state parks,
2 forests, and public lands effectively; and
3 (3) Provide government agencies the authority to mitigate
4 or remediate, or both, or require mitigation or
5 remediation, or both, of land failure hazards on
6 private property, and establish a procedure for
7 assessing the mitigation or remediation costs on the
8 property owners benefiting from such action, on a pro
9 rata basis.

10 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
11 by adding a new section to be appropriately designated and to
12 read as follows:

13 "§46- Development in hazardous areas. (a)
14 Notwithstanding any law to the contrary, it shall be a condition
15 precedent to approval of any county subdivision, development
16 plan, or building permit, to require a subdivider, developer, or
17 builder of a new residential, commercial, or industrial
18 structure, to:

19 (1) Perform a study to determine the risks of rockfalls or
20 landslides if any portion of the subdivision or
21 development project includes hillsides or cliffs with
22 a slope grade of twenty per cent or greater that poses

1 or may pose a hazard to any to any person or structure
2 on or adjacent to the subdivision or development
3 project site;

4 (2) To perform a risk assessment to determine whether and
5 to what extent conditions on an adjacent property pose
6 a risk of harm to the proposed subdivision,
7 development, future homeowners, or persons in the
8 vicinity thereof, if the adjacent property includes
9 hillsides or cliffs with a slope grade of twenty per
10 cent or greater immediately upslope from the
11 subdivision or development project site;

12 (3) Create hazard buffer zones or implement other
13 appropriate mitigation measures in areas of the
14 subdivision or development site where a rockfall or
15 landslide hazard is determined or is suspected to
16 exist, that are sufficient to protect the health and
17 safety of future homeowners and persons in the
18 vicinity of the property, and provide a written
19 disclosure of those risks to all potential homeowners
20 that will run with the land; and

21 (4) For purposes of this section, any determination of the
22 existence of a hazard or risk of harm from hillsides

1 "Land failure" means any movement of land, including a
2 landslide, debris flow, mudslide, creep, subsidence, rock fall,
3 and any other gradual or rapid movement of land;

4 "Owner" or "landowner" means any private entity or person
5 who has any right, title, or interest in or to property;

6 "Private property" means real property owned by persons or
7 entities other than the State, the several counties, or the
8 federal government.

9 **§ -2 Mitigation or remediation action.** Government
10 entities are authorized to undertake action to reduce the
11 potential for land failure from private property that imminently
12 threaten life or property or that otherwise is a public nuisance
13 by providing for the inspection and maintenance of hillsides
14 that present land failure hazards; by requiring private
15 landowners who are not subject to section 663-B to mitigate or
16 remediate land failure hazards on their property; and by
17 mitigating or remediating land failure hazards on private
18 property that constitute an imminent threat to life or that may
19 cause major economic loss or environmental damage; provided
20 that, to the extent any of the foregoing work is a private
21 responsibility, the responsibility may be enforced by the
22 government entity in lieu of the work being done at government

1 expense, and any private entity or person refusing to comply
2 with any order issued by the government entity shall be in
3 violation of this chapter and be liable for a civil penalty not
4 to exceed \$ for each day the violation continues.

5 **§ -3 Cost.** The cost of land failure hazard remediation
6 or mitigation on private property may also be financed by the
7 government entities by the following means:

8 (1) The State through the levying of special assessments
9 against owners of real property affected or
10 potentially affected by the land failure hazard. Real
11 property is affected or potentially affected where the
12 land failure hazard threatens injury to persons,
13 personal property, homes, or other structures that may
14 be located on that real property or threatens to cause
15 major economic loss or environmental damage to that
16 real property. The total amount of the special
17 assessments shall be limited to an amount reasonably
18 anticipated for the remediation or mitigation of the
19 land failure hazard. The owners of each affected or
20 potentially affected real property shall be assessed a
21 pro rata share of the total amount, which pro rata

1 share shall be based on the relative assessed value of
2 each affected or potentially affected real property.

3 (2) The counties through the levying of special taxes
4 pursuant to section 46-80.1.

5 **§ -4 Entry on private property.** In order to carry out
6 the provisions of this chapter, government officials are
7 authorized to enter upon private property as may be necessary in
8 making, at the owner's expense, any investigation, inspection,
9 maintenance, mitigation, or remediation authorized by this
10 chapter. Such entry shall not constitute a cause of action in
11 favor of the owner of the land.

12 **§ -5 No duty to act.** The government entities have no
13 duty to mitigate land failure hazards existing on private
14 property or to act under this chapter. No action or failure to
15 act under this chapter shall be construed to create any
16 liability in the government entities, or their respective
17 agencies, officers or employees, for the recovery of damages or
18 for any other relief. The State reserves sovereign immunity for
19 any action or failure to act under this chapter and nothing in
20 this chapter shall be construed to constitute a waiver of any
21 immunity of the State.

1 **§ -6 Property owner's continuing obligations.** Nothing
2 in this chapter and no order, action, or advice of the
3 government entities or their respective agencies or any
4 representative thereof shall be construed to relieve an owner of
5 property with a land failure hazard of the legal duties,
6 obligations, or liabilities incident to the ownership of the
7 property. The government entities shall have no ownership
8 obligations, responsibilities, or liability for any action taken
9 by said government entities under this chapter.

10 **§ -7 Rules.** The department of land and natural
11 resources may adopt rules pursuant to chapter 91 for purposes of
12 implementing this chapter."

13 SECTION 4. Chapter 663, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 **"PART . UNIMPROVED LAND LIABILITY**

17 **§663-A Definitions.** As used in this part:

18 "Naturally occurring land failure" means any movement of
19 land, including a landslide, debris flow, mudslide, creep,
20 subsidence, rock fall, and any other gradual or rapid movement
21 of land, that is not caused by alterations to, or improvements
22 constructed upon, the land.

1 "Unimproved land" means any land upon which there is no
2 improvement, construction of any structure, building, facility,
3 or alteration of the land by grading, dredging, or mining that
4 would cause a permanent change in the land area on which it
5 occurs and that would change the basic natural condition that
6 exists on the land.

7 **§663-B Land failure on unimproved land caused by natural**
8 **condition; liability.** A landowner shall not be liable for any
9 damage, injury, or harm to persons or property outside the
10 boundaries of the landowner's land caused by any naturally
11 occurring land failure originating on unimproved land,

12 **§663-C Natural condition.** For purposes of this part, the
13 natural condition of land exists notwithstanding minor
14 improvements, such as the installation or maintenance of utility
15 poles, fences, and signage; or minor alterations undertaken for
16 the preservation or prudent management of the unimproved land,
17 such as the installation or maintenance of trails or pathways or
18 maintenance activities, such as forest plantings and weed,
19 brush, rock, boulder, or tree removal."

20 SECTION 5. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.

H. B. NO. 1140

1 SECTION 6. In codifying the new sections added by section
2 4 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 7. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on July 1, 2009.

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INTRODUCED BY: Calvin K. By
BY REQUEST

JAN 26 2009

Report Title:

Land Failure; Liability; Private Property Mitigation

Description:

Requires precautionary actions imposed by the counties for development in potentially hazardous areas; removes the liability of landowners regarding natural conditions on their land that cause damage outside the land; and gives government agencies the authority to mitigate or require mitigation of land failure hazards on private property.

HB1140

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO LAND FAILURE.

PURPOSE: To:

- (1) Require the counties to adopt ordinances that require a subdivider or developer of property or a builder of a new structure, that has or is subject to hazardous rockfall or landslide conditions, to conduct a slope study or risk assessment, or both create appropriate buffer zones or implement other appropriate mitigation measures, and to provide notice of the risk to future homeowners and persons in the vicinity of the property;
- (2) To create conditional protection from liability for private and public landowners when a land failure event as a result of natural conditions on unimproved lands causes damage, injury, or harm to persons or property on adjacent or nearby properties; and
- (3) To provide government agencies the authority to mitigate or require mitigation of land failure hazards on private property and provide for the mitigation or remediation costs to be assessed on the affected property owners on a pro rata basis.

MEANS: Add a new section to chapter 46, Hawaii Revised Statutes (HRS); add a new chapter to title 10, HRS, and add a new part to chapter 663, HRS.

JUSTIFICATION: The State's natural beauty is preserved for future generations by the Department's efforts to protect and preserve state lands in its original condition, and also in

significant part, by the cooperation of private landowners who own and maintain large tracks of pristine lands in their natural state. For private landowners, many of these lands are conservation lands and not appropriate for development. Continued exposure to lawsuit or requests to mitigate or compensate for harm or injury caused on unimproved lands may force many landowners to sell or develop these lands to cover liabilities, or sell or turn over lands to the State or other government entities to avoid and shift liability to the general public.

In recent years, highly publicized incidents occurring at Sacred Falls, Nuuanu (Onishi), Makaha, Palolo, and Niu have created a heightened awareness of the risks of land failure events to life, limb, and property. Many of those incidents have resulted in substantial cost to the landowner in the form of judgments and mitigation expenses. The Department, other state and county agencies, and private landowners are increasingly being called upon to mitigate additional reported hazards occurring in natural conditions on their unimproved lands.

Due to the vast amount of unimproved lands, and the state policies to maintain these lands in their natural state, dangerous natural conditions occur throughout the State that could expose landowners to liability. Resources to conduct a thorough assessment of the risk on all lands are not available.

Additionally, expansion of urban sprawl and zoning approvals by county agencies have allowed urban and residential development to expand into and adjacent to many areas susceptible to land failure or rockfall hazards. Many of the valley walls adjacent to established and proposed subdivisions in the State are extremely steep and

susceptible to land failure. As the State's population grows and the pressure for development increases, the lack of open areas will force development into areas with natural hazards that threaten the safety of future homeowners and the general public.

Those threats to public safety can and should be controlled at the time of development or new construction. The Department is advocating a more proactive approach to managing risk of harm to the public from natural rockfall and landslide hazards.

Most of the scientific community is in agreement that the State's geologic conditions from volcanic origins combined with the abundance of rainfall ensures continued and increasing occurrence of land failure events throughout the State as our mountains and slopes naturally erode. Many of the valley walls adjacent to established subdivisions in the State are extremely steep and susceptible to land failure. Additionally, each island has its own particular problems and issues associated with its unique geologic characteristics. For example, the Island of Hawaii has a greater frequency of earthquakes that can trigger rockfall events.

A limited tort liability exemption for the State was created by Act 82, Session Laws of Hawaii 2003, for harm or injury caused on improved public lands (basically, state and county parks and the statewide trail and access system). The existing tort liability exemptions may not adequately address or apply to the scenario where a dangerous condition originating from public lands is the cause of damage, injury, or harm on adjacent or nearby properties. Act 82 does not cover liability on private property.

For the Department, unbudgeted expenditures to mitigate these types of hazards will

eventually cripple the Department's operational budget by diverting critical funds, needed to sustain its management responsibilities, to costly emergency mitigation projects. This fact is exacerbated by the difficult downturn in the state and national economy that threatens essential services and jobs. The typical cost for rockfall mitigation projects usually runs in the millions. By example, the current estimated costs for Komo Mai hillside and the Old Puunui Quarry projects are \$2,100,000 and \$1,760,000, respectively. If either case had involved an incident resulting in injury or death, the litigation and judgment costs alone would have far exceeded the mitigation costs and seriously impacted the State's fiscal health.

Land failure hazards on private lands pose a unique public safety issue for down slope landowners and the general public. An owner of private property that is found to contain a land failure hazard is likely to take no action in hopes that nothing will happen during the owner's tenure of ownership. It is unclear whether and how such owner can be compelled to address the hazard and ensure the safety of the threatened nearby property owners and the general public under existing laws. Clarifying the authority of government agencies to intervene in such situations or require action by the owner of the property with the land failure hazard, and providing for sharing of the costs among affected property owners, establishes a reasonable solution that will not bankrupt the State while promoting public safety.

This bill would:

- (1) Provide a reasonable and affordable means to ensure that future urban expansion and new construction will not add to the ongoing problem of rockfall and landslide hazards in populated areas;

- (2) Alleviate the need for the landowners, and the Department in particular, to exhaust their limited funds and resources on the task of mitigating risks associated with naturally occurring hazardous conditions, and allow the Department to focus them on its primary mission of managing state parks, forests, and public lands effectively; and
- (3) Provide government agencies the authority to mitigate or remediate, or both, or require mitigation or remediation, or both, of land failure hazards on private property, and establish a procedure for assessing the mitigation or remediation costs on the property owners benefiting from such action, on a pro rata basis.

Impact on the public: Would protect homeowners and occupants in future subdivisions and other development projects from rockfall and landslide hazards that may be in the vicinity of such projects. Would reduce the circumstances under which private landowners would, through no fault of their own, be placed in the position of being liable for and having to expend large sums of money to mitigate rockfall and landslide hazards on their lands that subject innocent persons on adjacent properties to harm, injury or worse as a result of imprudent, inappropriate or inadequate planning. Under most circumstances, the public will not be able to make claims or bring suit against a property owner for naturally occurring rockfall and other land failure events. This bill would protect private property owners from liability for land failure on private unimproved conservation lands. This bill would also allow government agencies to address land failure hazards on private lands and pass the cost

of such actions on to affected landowners who benefit from such action.

Impact on the department and other agencies: Similarly with private landowners, would reduce the circumstances under which the Department and other state and county agencies may be liable for or would have to expend resources to mitigate rockfall and landslide hazards associated with public lands that happen to be situated adjacent to new developments. This bill would also protect the Department and other state and county agencies from liability for land failure on public lands as a result of natural conditions. This bill would alleviate the need for government agencies to exhaust their funds and resources on the task of mitigating risks associated with naturally occurring hazardous conditions, and focus them on their respective primary core missions. Elimination of such unanticipated cost items that can constitute a significant percentage of an agency's overall budget would greatly enhance the State's ability to plan its budget in a fiscally sound manner. This bill also provides government agencies the authority to address land failure hazards on private lands without depleting limited state resources to do so.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 101; LNR 402; LNR 809.

OTHER AFFECTED AGENCIES: Department of the Attorney General, Department of the Accounting and General Services, Department of Transportation, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, counties.

EFFECTIVE DATE: July 1, 2009.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 951, RELATING TO LANDOWNER LIABILITY.

BEFORE THE:

HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

DATE: Monday, February 2, 2009 TIME: 9:00 AM

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General
or Caron M. Inagaki, Deputy Attorney General

Chair Ito and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to provide limited liability to landowners of unimproved lands for injuries or damages that occur outside the landowner's property caused by naturally occurring land failures.

The State of Hawaii owns and manages millions of acres of public lands, many of which are unimproved conservation or forest reserve lands. The bill would allow the State to serve the public interest to keep these lands in their natural state without fear of liability for damages occurring outside the boundaries of its lands caused by unpredictable and naturally occurring land failures, such as landslides and rockfalls.

The bill makes clear that the natural condition would still exist despite minor alterations such as the installation or maintenance of utility poles, fences, and signage. The bill also allows for maintenance activities for prudent land management such as forest plantings or weed, brush, rock, boulder, and tree removal. We would suggest, however, that the word "minor" be inserted at the beginning of section 663-3(3) to make it clear that the natural condition would not be maintained by substantial maintenance activities that significantly alter the condition of the land.

Thus, landowners who are protecting and managing public trust resources on unimproved lands are encouraged to act prudently and responsibly to maintain and manage these lands without fear that their actions to remove or mitigate potential hazards would be a material "improvement" that would take them out of the protections afforded under this bill.

We respectfully request that this bill be passed.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



CARRIE K.S. OKINAGA
CORPORATION COUNSEL

DONNA M. WOO
FIRST DEPUTY CORPORATION COUNSEL

January 30, 2009

The Honorable Ken Ito, Chair
and Members of the Committee on
Water, Land & Ocean Resources
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Re: Support of House Bill No. 951, Relating to Landowner Liability

Dear Chair Ito:

Thank you for the opportunity to provide testimony in support of House Bill No. 951. The City and County of Honolulu supports the Legislature's intention to codify the common law by enactment of House Bill No. 951 regarding the liability of owners of unimproved lands for personal or property damage that occurs outside the land owner's property boundary that occurs due to naturally occurring events on the unimproved land.

Very truly yours,

A handwritten signature in cursive script, reading "Carrie K.S. Okinaga".

CARRIE K.S. OKINAGA
Corporation Counsel

CKSO:rdl

William P. Kenoī
Mayor



Lincoln S.T. Ashida
Corporation Counsel

Katherine A. Garson
Assistant Corporation
Counsel

COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

January 30, 2009

The Honorable Ken Ito, Chair,
and Members
Committee on Water, Land and Ocean Resources
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Ito and Members of the Committee:

*Re: Testimony in Support of House Bill No. 951
Hearing: Monday, February 2, 2009, at 9:00 a.m.
Conference Room 325*

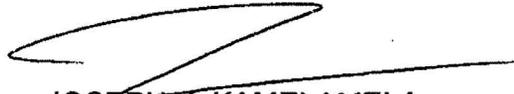
The purpose of House Bill 951 is to relieve a landowner for any damage, injury, or harm to persons or property outside the boundaries of the landowner's land caused by naturally occurring land failures originating on unimproved land. We support House Bill 951 for several reasons. First, it clarifies the landowner's duties when naturally occurring land failures originates on unimproved land. Second, the County of Hawai'i ("County") has authority over substantial acreages of unimproved land and it is not always possible to provide signage that warns people of possible dangers. And, third, consequently, this protects our County, who owns or purchases unimproved land, from unnecessary and costly litigation.

If the committee is considering passage of this measure, the County would like to amend the definition "minor alterations" in Section 663-c(2). The definition should be amended to include "the installation or maintenance of fences, trails, pathways or drainage facilities."

The Honorable Ken Ito, Chair
and Members
Committee on Water, Land and Ocean Resources
January 30, 2009
Page 2

Thank you for your consideration of our testimony.

Sincerely,



JOSEPH K. KAMELAMELA
Deputy Corporation Counsel,
Litigation Supervisor
County of Hawai'i

JKK:fc

c via email only: Kevin Dayton, Executive Assistant
Warren Lee, Director of Public Works
Robert A. Fitzgerald, Director of Parks and Recreation
Bobby-Jean Leithead-Todd, Deputy Director of Environmental
Management
Daryn Arai, Acting Planning Director



KAMEHAMEHA SCHOOLS

WRITTEN TESTIMONY TO THE HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

By
Kelly LaPorte, Outside Counsel for the Kamehameha Schools

Hearing Date: Monday, February 2, 2009
9:00 a.m., House Conference Room 325

Friday, January 30, 2009

TO: Representative Ken Ito, Chair
Representative Sharon E. Har, Vice Chair
Members of the Committee on Water, Land, & Ocean Resources

SUBJECT: Support of H.B. No. 951 – Relating to Landowner Liability for Natural Conditions.

My name is Kelly LaPorte, and I am outside counsel for the Kamehameha Schools. I am providing this testimony in support of H.B. No. 951 relating to landowner liability for natural conditions. This Bill codifies common law that protects State, County and private landowners who have not altered the natural condition of their land.

This Bill provides clarity with respect to liability from naturally occurring dangers, insulating up-slope landowners who have not altered the natural environment on their property, and is consistent with both common law and the Restatement of the Law of Torts. In two recent court cases involving a rockfall, *Onishi v. Vaughan*, and a massive mud and boulder slide, *Makaha Valley Towers v. Board of Water Supply*, after substantial litigation, the First Circuit Court in both instances acknowledged the applicability of this law when no artificial improvements have been constructed to create any additional risk. We have attached copies of the Hawai'i Revised Statute section that adopts common law, the treatises that restate this law, and the order in the *Onishi* case.

By codifying common law, this Bill provides certainty in Hawai'i law for natural conditions that exist on unaltered lands. Further, by expressly allowing minor improvements on land, it allows a reasonable use of natural land without triggering additional responsibilities. Expressly allowing minor improvements such as utility poles provides benefits to the community at large or, in the case of protective fences or warning signage, enhances safety. Importantly, the provision in this Bill that allows other, specified minor alterations of land, such as the *removal* of potentially dangerous natural conditions such as boulders or rocks, allows voluntary acts undertaken by either the landowner or owners of neighboring property without increasing the risk of liability.

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Friday, January 30, 2009

Representative Ken Ito, Chair
Representative Sharon E. Har, Vice Chair
Members of the Committee on Water, Land, & Ocean Resources

This is essentially a Good Samaritan provision that will encourage cooperation in voluntarily undertaking such measures intended to enhance safety. In the absence of this provision, a landowner may be reluctant to remove or alter any natural condition or allow others to come onto the land to do the same for fear of losing protection afforded by the common law.

By expressly allowing minor alterations of the land, such as allowing recreational visitors like day hikers on a hiking path, this similarly promotes the reasonable use and enjoyment of natural land, without losing the protection of this law. The Hawai'i legislature has already deemed this an important public policy in its enactment of Chapter 520, which purpose is to "encourage owners of land to make land . . . available to the public for recreational purposes by limiting their liability towards person entering thereon for such purposes." This Bill is consistent with this purpose.

In the absence of this Bill, landowners who, to date, have kept their land in a natural condition will possess a disincentive to keep the land in its unaltered state because of potential liabilities. Instead, these landowners possess an incentive to either develop the land or sell it to third parties for development. To the extent that the State, Counties, and Public Land Trusts acquire unaltered land for preservation and conservation purposes, this Bill protects them. Passage of this Bill will promote sustainable communities by encouraging the retention of natural lands, while at the same time protecting consumers by fostering proper planning and consideration of appropriate safeguards. We have attached a table explaining the basis for each of the foregoing provisions and its practical application.

In sum, landowners – both private and government – should be insulated from liability from any damage as a result of the natural condition of the land as recognized by common law, and should be encouraged to allow limited, reasonable use of their natural lands and to voluntarily reduce risk of rockfalls without losing this protection. Kamehameha Schools respectfully requests that you pass this important Bill.

H.B. No. 951

Relating to landowner liability for natural conditions.

Benefits of statute

Provides certainty in the law regarding obligations for natural conditions that exist on unaltered land:

- Expressly allows minor improvements on land such as erecting utility pole and signs without triggering additional obligations.
- Expressly provides exception for specific, minor alterations of land taken for preservation or prudent management of land.
- Avoids unnecessary litigation with respect to passive landowners who do not alter natural state of land.
- Protects consumers by fostering proper planning and consideration of safeguards in risk-creating activities outside the land.

Encourages sustainability of communities:

- Encourages retention of natural land within developed areas.
 - In the absence of statute, owners of natural land possess:
 - disincentive to retain land in natural state because of potential liabilities from naturally occurring land failures; and
 - incentive to either develop natural land or sell natural land to third parties for development.
- Allows modest recreational activities (walking, hiking) on natural land without creating additional obligations of landowner.

Encourages voluntary measures to reduce risks of naturally occurring land failures without triggering additional obligations.

Encourages prudent land management practices such as plantings and weed, brush, and tree removal without triggering liability.

Language	Basis for Provision	Practical Application
<p>§663-B Land failure on unimproved land caused by natural condition; liability.</p> <p>A landowner shall not be liable for any damage, injury, or harm to persons or property outside the boundaries of such land caused by any naturally occurring land failure originating on unimproved land.</p>	<p>This <i>codifies</i> common law, which is adopted in Hawaii under HRS § 1-1, and is consistent with the Restatement (Second) of Torts § 363 as to “natural conditions,” and expressly applies it to landowners.</p>	<p>Under this common law rule, if the landowner does not create any condition that creates a risk of harm to others outside the land caused by a naturally occurring land failure, the landowner has no affirmative duty to remedy conditions on the property of purely natural origin.</p> <p>The First Circuit Court recognized and applied this common law rule in 2005 in the <u>Onishi</u> lawsuit. This rule did not alter the outcome in that case, however, because the court held that the factual issue of whether artificial conditions (i.e., non-natural conditions created by upslope City roadway, drainage culvert, or privately owned driveway that diverted water) caused the rockfall would have to be determined by a jury. Given these substantial alterations of the land in <u>Onishi</u>, the proposed statute would not have provided immunity to landowners because the land was improved (not “unimproved”).</p> <p>This provision does <i>not</i> alter any obligations that a landowner may have to persons <i>on</i> that landowner’s property, such as the State’s duty to warn visitors to the Sacred Falls State Park that the First Circuit Court held was violated following the 1999 rockfall that killed and injured visitors to the public park.</p>

<p>§663-C Natural condition. For purposes of this part, the natural condition of land exists and shall not be considered altered or improved notwithstanding that the following has occurred: (1) Minor improvements, including the installation or maintenance of utility poles and signage;</p>	<p>This provides <i>clarity</i> and <i>certainty</i> in the application of the law by expressly providing that <i>minor improvements</i> placed on unimproved land that are not likely to increase the risk of naturally occurring land failures will not trigger an affirmative duty upon landowners to remedy conditions on the property of purely natural origin.</p>	<p>An owner of unimproved land may erect signage on the land that warns visitors of dangers that may exist <i>on</i> the land, or may provide easements to allow electrical or telephone companies to place utility poles that provide service to the public, without fear that doing so would trigger additional obligations to remediate any conditions unrelated to such improvements. In the absence of allowing for such minor improvements to be placed on natural land, landowners may refuse to install minor improvements that are intended to safeguard against dangers within the land. Further, this may restrict the availability of land needed by utilities to provide service to the public.</p>
<p>(2) Minor alterations undertaken for the preservation or prudent management of the unimproved land, including the installation or maintenance of fences, trails, or pathways; (3) Maintenance activities, including forest plantings and weed, brush, boulder, or tree removal; or</p>	<p>This similarly provides <i>clarity</i> and <i>certainty</i> in the application of the law by expressly providing that <i>minor alterations</i> undertaken on unimproved land for preservation or maintenance purposes will not trigger an affirmative duty upon landowners to remedy conditions on the property of purely natural origin.</p>	<p>An owner may make <i>minor</i> alterations to natural land, such as unpaved trails or paths or installing fences to protect a watershed area, that are used for management of the land, or allow visitors to traverse the land for recreational purposes such as hiking with minimal disturbance to the natural conditions, without losing protection of this law. This promotes the reasonable use of the land that is unlikely to create additional danger of land failures, and allows the visitation of natural land without creating additional liabilities.</p>

<p>(4) The removal or securing of rocks or boulders undertaken to reduce risk to downslope properties.</p>		<p>An owner of unimproved land may also volunteer to remove rocks or boulders that may pose a danger to others outside the land without triggering a duty to remedy all <i>other</i> conditions of purely natural origin, or allow downslope residents to do the same without creating additional duties owed to downslope residents. Essentially, this encourages Good Samaritan acts without increasing liability. In the absence of this provision, a landowner may be reluctant to undertake <i>any</i> minor alterations that are intended to reduce risk because of a fear of losing immunity under the common law rule.</p>
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§ 1-1. Common law of the State; exceptions.

The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State. [L 1892, c 57, § 5; am L 1903, c 32, § 2; RL 1925, § 1; RL 1935, § 1; RL 1945, § 1; RL 1955, § 1-1; HRS § 1-1]

**PROSSER AND KEETON
ON
THE LAW OF TORTS**

Fifth Edition

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be the misrepresentation as to the character of the property.³⁹

Natural Conditions

The one important limitation upon the responsibility of the possessor of land to those outside of his premises has been the traditional rule, of both the English and the American courts, that he is under no affirmative duty to remedy conditions of purely natural origin upon his land, although they may be highly dangerous or inconvenient to his neighbors.⁴⁰ The origin of this, in both countries, lay in an early day when much land, in fact most, was unsettled or uncultivated, and the burden of inspecting it and putting it in safe condition would have been not only unduly onerous, but out of all proportion to any harm likely to result. Thus it has been held that the landowner is not lia-

39. See *infra*, § 61.

40. Second Restatement of Torts, § 363. See Noel, *Nuisances from Land in its Natural Condition*, 1943, 56 *Harv.L.Rev.* 772; Goodhart, *Liability for Things Naturally on the Land*, 1930, 4 *Camb.L.J.* 13.

41. *Roberts v. Harrison*, 1897, 101 *Ga.* 773, 28 *S.E.* 996.

42. *Pontardawe R. D. C. v. Moore-Gwynn*, [1929] 1 *Ch.* 656. But see *Sprecher v. Adamson Companies*, 1981, 30 *Cal.3d* 358, 178 *Cal.Rptr.* 783, 636 *P.2d* 1121 (duty of due care to prevent landslide).

43. See *supra*, note 25.

44. *Giles v. Walker*, 1890, 24 *Q.B.D.* 656 (thistles); cf. *Salmon v. Delaware, L. & W. R. Co.*, 1875, 38 *N.J.L.* 5 (leaves); *Langer v. Goode*, 1911, 21 *N.D.* 462, 131 *N.W.* 258 (wild mustard).

45. *Brady v. Warren*, [1909] 2 *Ir.Rep.* 632; *Stearn v. Prentice Bros.*, [1919] 1 *K.B.* 394; *Seaboard Air Line Railroad Co. v. Richmond-Petersburg Turnpike Authority*, 1961, 202 *Va.* 1029, 121 *S.E.2d* 499 (pigeons); *Merriam v. McConnell*, 1961, 31 *Ill.App.2d* 241, 175 *N.E.2d* 293 (box elder bugs). Nor, perhaps, for horses kept by a tenant. *Blake v. Dunn Farms, Inc.*, 1980, — *Ind.* —, 413 *N.E.2d* 560. Contra, perhaps, for horses kept by an employee. See *Misterek v. Washington Mineral Products, Inc.*, 1975, 85 *Wn.2d* 166, 531 *P.2d* 805. Cf. *Weber v. Madison*, *Iowa* 1977, 251 *N.W.2d* 523 (geese); *King v. Blue Mountain Forest Association*, 1956, 100 *N.H.* 212, 123 *A.2d* 151 (wild Prussian boar, fourth or fifth generation from original imports).

46. See *Keys v. Romley*, 1966, 64 *Cal.2d* 396, 50 *Cal. Rptr.* 273, 412 *P.2d* 529; *Mohr v. Gault*, 1860, 10 *Wis.* 513; *Livezey v. Schmidt*, 1895, 96 *Ky.* 441, 29 *S.W.* 25.

47. *Rockafellow v. Rockwell City*, *Iowa* 1974, 217 *N.W.2d* 248; *Bailey v. Blacker*, 1929, 267 *Mass.* 73, 165

ble for the existence of a foul swamp,⁴¹ for falling rocks,⁴² for uncut weeds obstructing the view of motorists at an intersection,⁴³ for thistles growing on his land,⁴⁴ for harm done by indigenous animals,⁴⁵ or for the normal, natural flow of surface water.⁴⁶ Closely allied to this is the generally accepted holding that an abutting owner is under no duty to remove ice and snow which has fallen upon his own land or upon the highway.⁴⁷

On the other hand, if the occupier has himself altered the condition of the premises, as by erecting a structure which discharges water upon the sidewalk,⁴⁸ setting up a parking lot upon which water will collect,⁴⁹ weakening rocks by the construction of a highway,⁵⁰ damming a stream so that it forms a malarial pond,⁵¹ planting a row of trees next to the highway,⁵² digging out part of a hill,⁵³ or piling sand or plowing a field so that the

N.E. 699; *Moore v. Gadsden*, 1881, 87 *N.Y.* 84. Ordinances requiring the property owner to remove snow and ice usually are construed to impose no duty to any private individual. See *supra*, § 36.

48. See *Leahan v. Cochran*, 1901, 178 *Mass.* 366, 60 *N.E.* 382; *Tremblay v. Harmony Mills*, 1902, 171 *N.Y.* 598, 64 *N.E.* 501; *Updegraff v. City of Ottumwa*, 1929, 210 *Iowa* 382, 228 *N.W.* 928. Note, 1937, 21 *Minn.L. Rev.* 708, 713; cf. *Harris v. Thompson*, *Ky.* 1973, 497 *S.W.2d* 422 (broken water pipe caused ice on road). But see *North Little Rock Transportation Co. v. Finkbeiner*, 1967, 243 *Ark.* 596, 420 *S.W.2d* 874 (Finky not liable for water in street from sprinkler system).

49. *Moore v. Standard Paint & Glass Co. of Pueblo*, 1960, 145 *Colo.* 151, 358 *P.2d* 33. But see *Williams v. United States*, *E.D.Pa.* 1981, 507 *F.Supp.* 121 (no liability, under "hills and ridges" doctrine, for slippery sheet of ice with no ridges or elevations in parking lot).

50. *McCarthy v. Ference*, 1948, 358 *Pa.* 485, 58 *A.2d* 49.

51. *Mills v. Hall*, *N.Y.* 1832, 9 *Wend.* 315; *Towaliga Falls Power Co. v. Sims*, 1909, 6 *Ga.App.* 749, 65 *S.E.* 844. Cf. *Andrews v. Andrews*, 1955, 242 *N.C.* 382, 88 *S.E.2d* 88 (artificial pond collecting wild geese, which destroyed plaintiff's crops).

52. *Coates v. Chinn*, 1958, 51 *Cal.2d* 304, 332 *P.2d* 289 (cultivated trees). Accord, *Wisher v. Fowler*, 1970, 7 *Cal.App.3d* 225, 86 *Cal.Rptr.* 582 (maintaining hedge). Cf. *Crowhurst v. Amersham Burial Board*, 1878, 4 *Exch.Div.* 5, 48 *L.J.Ex.* 109 (planting poisonous trees near boundary line). But there may be no liability for merely failing to cut weeds. See *supra*, note 25.

53. *Fabbri v. Regis Forcier, Inc.*, 1975, 114 *R.I.* 207, 330 *A.2d* 807.

RESTATEMENT OF THE LAW
Second

TORTS 2d

Volume 2
§§ 281-503

As Adopted and Promulgated

BY

THE AMERICAN LAW INSTITUTE

AT WASHINGTON, D. C.

May 25, 1963

and

May 22, 1964

ST. PAUL, MINN.

AMERICAN LAW INSTITUTE PUBLISHERS

1965

§ 363. Natural Conditions

(1) Except as stated in Subsection (2), neither a possessor of land, nor a vendor, lessor, or other transferor, is liable for physical harm caused to others outside of the land by a natural condition of the land.

(2) A possessor of land in an urban area is subject to liability to persons using a public highway for physical harm resulting from his failure to exercise reasonable care to prevent an unreasonable risk of harm arising from the condition of trees on the land near the highway.

See Reporter's Notes.

Caveat:

The Institute expresses no opinion as to whether the rule stated in Subsection (2) may not apply to the possessor of land in a rural area.

Comment:

a. The rule stated in Subsection (1) applies although the possessor, vendor, or lessor recognizes or should recognize that the natural condition involves a risk of physical harm to persons outside the land. Except under the circumstances in Subsection (2) of this Section, this is true although there is a strong probability that the natural condition will cause serious harm and the labor or expense necessary to make the condition reasonably safe is slight.

b. *Meaning of "natural condition of land."* "Natural condition of the land" is used to indicate that the condition of land has not been changed by any act of a human being, whether the possessor or any of his predecessors in possession, or a third person dealing with the land either with or without the consent of the then possessor. It is also used to include the natural growth of trees, weeds, and other vegetation upon land not artificially made receptive to them. On the other hand, a structure erected upon land is a non-natural or artificial condition, as are trees or plants planted or preserved, and changes in the surface by excavation or filling, irrespective of whether they are harmful in themselves or become so only because of the subsequent operation of natural forces.

c. *Privilege of public authorities to remove danger.* The fact that a possessor of land is not subject to liability for natural

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT
VANCE N. VAUGHAN, SUCCESSOR TRUSTEE OF THE VANCE VAUGHAN
REVOCABLE TRUST'S CROSS MOTION FOR SUMMARY JUDGMENT
FILED ON JULY 28, 2005, AND VANCE N. VAUGHAN AND KERRY N.
VAUGHAN'S SUBSTANTIVE JOINDER FILED ON JULY 28, 2005**

On July 20, 2005 Defendant Vance N. Vaughan, Successor Trustee of the Vance Vaughan Revocable Trust filed a Cross Motion For Summary Judgment. Vance N. Vaughan, Individually, and Kerry N. Vaughan filed a Substantive Joinder to the Cross Motion for Summary Judgment on July 28, 2005. Said motion came on for hearing before the Honorable Karen S.S. Ahn on August 8, 2005 at 10:00 a.m. At that hearing, Plaintiffs were represented by Wesley W. Ichida, Esq., and Ann C. Kemp, Esq., Defendant Hiroko Vaughan was represented by Michael J. McGuigan, Esq., Defendant Hawaii Castle Corporation was represented by Brad S. Petrus, Esq., Defendant City and County of Honolulu was represented by Derek Mayoshiro, Esq., Defendants Vance N. Vaughan, Individually, and Kerry Vaughan were represented by Steve K. Hiaaka, Esq., and Defendant Vance N. Vaughan, Successor Trustee of the Vance Vaughan Revocable Trust, was represented by Amanda J. Weston, Esq. The Court reviewed all memoranda and affidavits submitted, heard the arguments of counsel and took the motion under advisement. Being fully advised in the matter,

IT IS HEREBY ORDERED that Defendant Vance N. Vaughan's, Successor Trustee of the Vance Vaughan Revocable Trust, Cross Motion For Summary Judgment filed on July 20, 2005, and Substantive Joinder is granted in part and denied in part as follows. The Court holds that under the common law as adopted in the State of Hawaii and as reflected in the Restatement 2d, Torts:

1) A real property owner owes no duty with respect to natural conditions on his property;

Under the common law as adopted in the State of Hawaii and as reflected in the Restatement 2d, Torts: 1) A real property owner owes no duty with respect to natural conditions on his property;

2) However, a real property owner does owe a duty to exercise reasonable care with respect to non-natural or artificial conditions on his property.

The Court finds that a genuine issue of material fact exists as to the existence or nonexistence of an artificial condition which proximately caused the injuries of which Plaintiffs complain.

DATED: Honolulu, Hawaii, DEC 23 2006



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:



JOHN H. PRICE, ESQ.
AMANDA J. WESTON, ESQ.
Attorney for Defendant
VANCE N. VAUGHAN, SUCCESSOR
TRUSTEE OF THE VANCE VAUGHAN
REVOCABLE TRUST



CARRIE S. OKINAGA, ESQ.
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BRAD S. PETRUS, ESQ.
Attorney for Defendant
HAWAII CASTLE CORPORATION

2) However, a real property owner owes a duty to exercise reasonable care with respect to non-natural or artificial conditions on his property.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 951, RELATING
TO LANDOWNER LIABILITY**

February 2, 2009

To: Chairman Ken Ito and Members of the House Committee on Water, Land, & Ocean Resources:

My name is Bob Toyofuku and I am testifying on behalf of the Hawaii Association for Justice (HAJ) formerly known as Consumer Lawyers of Hawaii in opposition to H.B. No. 951.

The purpose of this bill is to provide all public and private landowners with absolute immunity from any injury to person or property caused by any land failure on unimproved land if a natural condition causes the "land failure".

The preamble to the substantive provisions of the bill states that public and private landowners lack sufficient resources to protect society against every risk and to provide compensation for every injury caused by natural hazards. Public and private landowners are liable only when they have a duty to any third person who may be injured. That duty is to follow a standard of care that a reasonable person must use under the circumstances to prevent harm to others. This is the essence of the concept of negligence in tort law. In other words, the public and private landowner must not act in a negligent manner. There is no legal obligation that a landowner protects against every risk or be liable for every injury.

A major flaw with this bill is that gives immunity for conditions that can and should be remedied to avoid reasonably preventable injury or death to innocent citizens.

HAJ has always maintained that proponents of an immunity bill should at least

provide the legislature with the data that clearly indicates the number and type of lawsuits that have been filed against public and private landowners of unimproved lands for personal injuries or property damage that have occurred on such unimproved land due to natural conditions, any resulting judgment against the landowner, and the circumstances under which the landowner was found to be negligent. The state already has substantial protection from liability in connection with natural conditions on unimproved lands under Act 82. We have always maintained that the legislature should have all of the facts and data before a major shift in public policy is made. This bill is not in the public interest and would be creating bad public policy.

Thank you for the opportunity to testify on this bill. HAJ respectfully requests that this bill be held in committee.