

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**

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

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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

COMMENTS

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

**Friday, February 5, 2010
9:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1882
RELATING TO SHORELINE SETBACK**

House Bill 1882 prohibits inclusion of accreted lands in determining the shoreline setbacks in counties with population over 500,000. Among other things, this bill recommends a shoreline setback of not less than 20 feet from "any accreted land." While the Department of Land and Natural Resources (Department) prefers the Administration's House Bill 1049 (RELATING TO COASTAL ZONE MANAGEMENT) as a global approach to addressing shoreline issues, the Department nonetheless acknowledges that House Bill 1882 is not in conflict with House Bill 1049, but supplements the Administration measure regarding accretion.

The Department does recommend a technical amendment to the bill. The definition of "Accreted lands" contained in Section 171-1, Hawaii Revised Statutes, is vague. Accreted lands means "lands formed by the gradual accumulation of land on a beach or shore along the ocean by the action of natural forces." Thus, the phrase "any accreted lands" could be interpreted to encompass lands that accreted last year, ten years ago or 10,000 years ago. Moreover, there is no way of knowing whether such lands have always been accreting, or have been stable, eroding, and then re-accreting during this time period.

It is the Department's understanding that the intent of this measure is to provide additional protection of lands that have been claimed under the State's accretion laws. Should this be the case, the Department feels that the term "any accreted lands" should be qualified as follows:

(c) For the purposes of this section, "accreted land" shall be those lands judicially decreed or registered under the state's accretion laws.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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COMMENTS

Statement of
ABBEY S. MAYER
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES
Friday, February 5, 2010
9:00 AM
State Capitol, Conference Room 325

in consideration of
HB 1882
RELATING TO SHORELINE SETBACK

Chair Ito, Vice Chair Har and Members of the House Committee on Water, Land and Ocean Resources.

We have the following comments regarding HB 1882 Relating to Shoreline Setbacks. HB 1882 amends Sec.205A-43, HRS to add language that for any county with a population greater than five hundred thousand, the setback along the shoreline shall not be less than twenty feet from the shoreline or twenty feet from any accreted lands along the shoreline whichever is greater. For the purposes of this bill, accreted lands are defined as having the same meaning as in Sec. 171-1, HRS. According to Sec. 171-1 HRS, accreted lands are lands formed by the gradual accumulation of land on a beach or shore along the ocean by the action of natural forces.

The definition of accreted lands in Sec. 171-1, HRS, does not provide guidance as to a starting point/date for these accreted lands formed by the accumulation of land on a beach or shore. Lands have been accreting and eroding for generations. It is possible that homes have been built on lands that have accreted in the past. The proposed language does not provide sufficient guidance to determine where the accreted lands occur.

We prefer Administration Bill HB 1049/SB 867 (09) Relating to Coastal Zone Management which includes language which takes into account erosion and accretion rates. The language is as follows:

SECTION 5. Section 205A-43, Hawaii Revised Statutes, is amended to read as follows:

"§205A-43 Establishment of shoreline setbacks and duties and powers of the department. (a) Setbacks along shorelines are established of not less than twenty feet and not more than forty feet inland from the shoreline [~~The department shall adopt rules pursuant to chapter 91, and shall enforce the shoreline setbacks and rules pertaining thereto.~~], unless the shoreline setback line is established based on average annual shoreline erosion or accretion rates.

(b) The powers and duties of the department shall include, but not be limited to:

- (1) The department shall adopt rules under chapter 91 prescribing procedures for determining the shoreline setback line[+], and shall enforce the shoreline setbacks and rules pertaining thereto; and
- (2) The department shall review the plans of all applicants who propose any structure, activity, or facility that would be prohibited without a variance pursuant to this part. The department may require that the plans be supplemented by accurately mapped data and photographs showing natural conditions and topography relating to all existing and proposed structures and activities."

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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SUPPORT

MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 5, 2010

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

Dear Chair Ito and Members:

**Subject: House Bill No. 1882
Relating to Shoreline Setback**

The Department of Planning and Permitting **supports** the intent of this bill; however, we see fundamental flaws in its proposed application. As proposed, the bill would ensure that any construction or development improvements would be positioned in such a manner as to not interfere with the natural process of accretion and erosion along the shoreline. This is a laudable policy; however, the bill limits its jurisdiction only to Oahu. The natural process of accretion and erosion is not limited to any particular island and if the policy is a sound one for the protection of beaches and adjacent structures, then it should be applied statewide.

Our other concern is that the bill does not provide a baseline for determining the location of "accreted lands." The reference to Section 171-1 merely provides a general definition that is not very useful in determining where the shoreline setback would be measured from the "accreted lands." Without a properly defined baseline, any attempt to locate and certify the shoreline would be arbitrary and capricious.

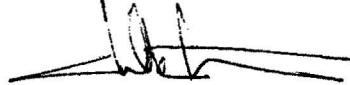
We are aware that the State Department of Land and Natural Resources is currently studying the issue of properly locating development along Kailua Beach and will be preparing a beach management master plan that would propose optimum locating of structures for their protection, as well as ensuring

The Honorable Ken Ito, Chair
and Members of the Committee on
Water, Land & Ocean Resources
State House of Representatives
House Bill No. 1882
February 5, 2010
Page 2

long-term protection for the beach. We strongly recommend that this bill be **deferred** until this study is completed.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David Tanoue', with a horizontal line extending to the right.

David Tanoue, Director
Department of Planning and Permitting

DKT: jmf
hb1882-ac.doc

Charles (Chip) Fletcher, Ph.D.
Professor and Chair
Department of Geology and Geophysics, University of Hawaii at Manoa
1680 East-West Rd., Honolulu, HI 96734
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SUPPORT

Committee on Water Land and Ocean Resources
2/5/10

Members of the Committee, Chair Ito, Vice-Chair Har, thank you for this opportunity to testify.

My name is Chip Fletcher. I am a geology professor at the University of Hawaii and a resident of Kailua.

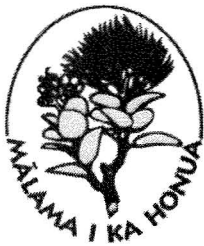
I strongly favor the passage of HB-1882.

In this era of rising sea level, extraordinary steps to preserve our beaches are called for. This bill will give extended life to beaches, such as Kailua, that have accreted in the past. I have read the language of the bill and its content agrees with the studies we have done on Kailua and other beaches in Hawaii.

Will this law be difficult to enforce? I don't think so. We know which beaches have accreted. The data for this is publically available on a website that is funded by DLNR and the counties of Maui, Kauai, and Honolulu. Also, any permit showing past certified shoreline positions will reveal whether a parcel has accreted by the history of shoreline positions.

I am sorry I cannot be present for this hearing – I have a class at this time.

Thank you for your time.



Sierra Club Hawai'i Chapter

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SUPPORT

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES February 5, 2010, 9:00 A.M.

(Testimony is 1 pages long)

TESTIMONY IN SUPPORT FOR HB 1882 WITH PROPOSED AMENDMENTS

Aloha Chair Ito and Members of the Committees:

The Hawai'i Chapter of the Sierra Club supports the intent of HB 1882, which would prohibit the inclusion of accreted lands in determining coastal shorelines. We suggest two amendments.

First, we suggest this measure be amended to apply to all counties (striking the language “, in any county with a population greater than five hundred thousand,” on lines 15-16 on page 2). The rationale underlying this bill is equally applicable to all counties and, quite frankly, some of the neighboring islands are experiencing greater rates of erosion/accretion the O'ahu.

Second, with respect to the effective date of determining when the accretion started, we suggest tying this measure to Haw. Rev. Stat. §501-33 (passed in 2003 as Act 73). In Act 73, this body declared that title to shoreline land naturally accreted cannot be registered by anyone except the State, and that only the State could quiet title to accreted lands. In order to fulfill the general related purpose of these two statutes, it would seem appropriate to link them with regard to measuring the accredited land.

Thank you for this opportunity to provide testimony.



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