



**SB2245 SD1
RELATING TO BEACHES**

House Committee on Ocean, Marine Resources, & Hawaiian Affairs
House Committee on Energy & Environmental Protection

March 23, 2016

9:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB2245 SD1. This measure which would facilitate the maintenance of our shoreline areas and beaches, by exempting locally-sourced sand from water quality regulations, when used for restoration- and erosion mitigation- related activities on adjoining beaches.

Hawai‘i’s beaches and shoreline areas provide numerous benefits to the Native Hawaiian community and the public, that are critical to our cultural values and kama‘āina way of life. Our beaches and shoreline areas provide a place to bond with ‘ohana and friends, help to foster positive youth development and an early appreciation for our natural resources, and provide for a variety of recreational activities, such as surfing and fishing, that have been staples of local life for generations. Moreover, access to the shoreline and the resources of the nearshore environment is critical to the perpetuation of many Native Hawaiian traditional and customary and subsistence practices. Accordingly, OHA appreciates the intent of this measure, to facilitate the maintenance of our beach areas using appropriately-sourced sand.

OHA understands that the use of sand from stream and channel mouths to nourish adjoining beaches may, in many cases, ensure the greatest chance of success for beach mitigation and maintenance efforts, while minimizing the potential extent of adverse physical, biological, or chemical impacts. OHA can also appreciate the difficulties that may be encountered in the Department of Health’s regulatory processes for water quality protection and pollutant discharge. However, in some instances, the use of sand, even from adjacent stream or channel mouths, to nourish beach areas may potentially result in adverse and unnecessary impacts to coastal water quality and the nearshore environment. For example, fine silt or sand deposited along shorelines with high erosion rates may result in the smothering of coral and other benthic life; contaminants concentrated near the mouths of streams running through or by urban areas and landfills may be spread to less-impacted areas along the adjacent coast; and “naturally occurring” sand near stream or channel mouths may in fact contain a range of sediment characteristics that are not the most optimal for beach nourishment. **Accordingly, OHA urges the Committees to seek and consider the input of erosion control experts, aquatic biologists, and health safety officials with regards to additional safeguards or standards it may wish to incorporate in this bill.**

Mahalo nui for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committees on
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS
and
ENERGY & ENVIRONMENTAL PROTECTION**

**Wednesday, March 23, 2016
9:30 A.M
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 2245, SENATE DRAFT 1
RELATING TO BEACHES**

Senate Bill 2245, Senate Draft 1 proposes to amend the definition of “water pollutant” as used in Chapter 342D, Hawaii Revised Statutes (HRS), to exclude locally sourced beach sand. **The Department of Land and Natural Resources (Department) supports this measure.**

It is the mission of the Department to manage public lands and ocean resources, including beaches throughout the State. The Department is very much at the forefront of addressing impacts related to coastal erosion and beach loss in Hawai‘i. Beaches are central to our culture and economy, yet our beaches are being lost at alarming rates due natural processes and human impacts, threatening alongshore public access and upland development.

Following the Department’s Coastal Erosion Management Plan, staff is actively working with county governments and private landowners to facilitate “soft” solutions to erosion management instead of coastal armoring, which has been shown to have deleterious effects on beaches. These soft solutions include dune restoration, sand back-passing or bypassing, and stream mouth clearing. These sediment management projects utilize clean sand from a section of beach with a surplus of sand to restore a nearby eroded section of beach or dune, with careful consideration of seasonal variability and the beach and marine environment. These types of sediment management projects are currently inhibited from placing clean, locally-sourced sand below the high water line because it would be considered a discharge of a “water pollutant” triggering the lengthy Clean Water Act Section 401 Water Quality Certification (401 WQC) process. In many cases, proper restoration of a beach requires placing sand along the entire active beach profile, above and below the high water line.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

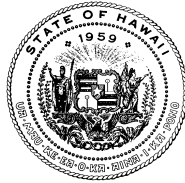
There are plentiful examples in the State of projects that re-distribute or bypass sand without adverse water quality impacts: Kīkīaola Small Boat Harbor near Waimea, Kaua‘i and Kailua, Waikīkī, Mākaha, and North Shore beaches, O‘ahu, and other beaches throughout the State. These efforts are all potentially subject to State Water Quality permitting because natural beach sand is considered a “water pollutant” based on the definitions in Section 342D-1, HRS.

These types of sediment management projects are needed on beaches around the State. Often a dune restoration or sand back-passing project needs to be implemented in a matter of days or weeks in response to a sudden erosion event to restore a beach environment and protect public safety and infrastructure. It can be challenging or impossible to initiate a project in this rapid time frame because clean beach sand is considered a “water pollutant” when moved along the same beach and discharged in or near the water.

It is not the intent of the Department or this bill to undermine the provisions of the Federal Clean Water Act. In fact, sand used from an upland source or dredged from deeper off shore sand fields would continue to be regulated under the Section 401 Water Quality Certification (401 WQC) process.

The Department recognizes the vulnerability of our nearshore marine resources. In fact, the Department maintains its own environmental guidelines on sand compatibility for beach restoration projects through our Small Scale Beach Nourishment application program. We feel the State’s general interpretation of sand as a “water pollutant” in the definition in Section 342D-1, HRS, for “minor” or “non-controversial” beach management projects as described above is unjustified. A revision to the Statute through this bill will be very helpful in clarifying this interpretation and facilitating the State’s efforts to maintain and protect beach environments.

Thank you for the opportunity to testify on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**WRITTEN
TESTIMONY ONLY**

**Testimony in OPPOSITION to S.B. 2245 S.D.1
RELATING TO BEACHES**

REPRESENTATIVE KANIELA ING, CHAIR
COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS
REPRESENTATIVE CHRIS LEE, CHAIR
COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Hearing Date: March 23, 2016
Time: 9:30 am

Room Number: 325

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health respectfully opposes this measure. The
3 purpose of this measure is to amend the Hawaii Revised Statutes, Section 342D-1 definition of
4 “water pollutant” by specifying that sand shall not be considered a water pollutant if it is
5 naturally-occurring beach sand sourced from a Hawaiian beach, stream mouth, or channel, and
6 utilized on the adjoining beach or littoral cell for the purposes of beach erosion mitigation,
7 sediment management, beach restoration, erosion control or dune restoration.

8 All States are required to comply with Federal Clean Water Act (CWA) requirements.
9 Pursuant to federal regulations, all states, including Hawai‘i’s “Water Pollution” statutes are
10 required to be at least as stringent as the federal standards prescribed by the CWA. CWA,
11 §502(6) defines “sand” as a “pollutant” and it does not provide exclusions for any particular
12 types of sand.

13 The CWA recognizes that sand mining and placement can have significant environmental
14 impacts. Moving and mining sand alters the physical environment and raises ecological and
15 erosion concerns. The placement of sand alters the biological and chemical environment. This
16 may adversely affect the ecosystem and water quality where the sand is placed.

17 Beach sand sourced from a beach, stream mouth, or channel has a high potential to
18 contain contaminants from stream sediment and flood borne contaminants that may cause

1 diseases. Commonly, sediments accumulated on sand adjacent to stream or channel contain other
2 pollutants such as dirt, municipal water waste, agricultural wastes, and industrial wastes. Sand
3 that is dredged or excavated from stream mouth contains a multitude of pollutants from
4 upstream-sources.

5 Moreover, recent studies, including one conducted by the University of Hawai‘i,
6 Department of Civil and Environmental Engineering in June 2013, have reported high levels of
7 fecal indicator enterococci in Hawai‘i’s beach sand. These studies show that the enterococcus-
8 laden sand serves as a potential source of contamination for beach water and may cause illnesses.

9 We would like to emphasize that the DOH has been involved with a variety of
10 approaches to expedite Section 401 Water Quality Certifications (WQC).

- 11 • Sand excavated during a stream mouth clearing activity that meets applicable State Water
12 Quality Standards is allowed to be placed above the high tide line (HTL)/ordinary high
13 water mark (OHWM) without additional Department of the Army (DA) permitting
14 requirements. Thus, no WQC from the DOH is required.
- 15 • The Department of Land and Natural Resources (DLNR), Office of Conservation and
16 Coastal Land (OCCL) can request from the DA, a State Programmatic General Permit
17 (SPGP) for all Small-Scale Beach Nourishment (SSBN) projects. DOH could then
18 process a single Section 401 WQC that would cover all SSBN projects regulated by
19 DLNR.
- 20 • Government and private entities can develop standardized Best Management Practices
21 (BMP) for their beach erosion mitigation and beach restoration activities. Following a
22 recent DOH Kaizen event, several state and county agencies are working on standardized
23 BMPs for select activities to help expedite the Section 401 WQC process.

24 For these reasons, it is prudent for the State to continue to regulate sand mining and
25 placement activities to prevent water pollution and to ensure that these activities comply with
26 Hawaii Administrative Rules, Chapter 11-54 Water Quality Standards, including the stream
27 bottom criteria.

28 Thank you for the opportunity to testify on this measure.

TESTIMONY IN SUPPORT

Date: 3/20/2016

FROM: Coastal Planners, LLC (Consultant)
3993 Maalaea Bay Place
Wailuku, HI 96793

Telephone: 808-344-1595

Email: Thorneabbott@yahoo.com



TO THE: COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS
Honorable Rep. Kaniela Ing, Chair
Honorable Rep. Nicole E. Lowen, Vice Chair

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Honorable Rep. Chris Lee, Chair
Honorable Rep. Nicole E. Lowen, Vice Chair

RE: IN SUPPORT OF SB 2245 SD1 Relating to Beaches

Dear Committee Members, Chair and Vice Chair:

I am a coastal consultant that assists resorts, residential property owners, and particularly condominiums in responding to erosion crisis and coastal hazard mitigation. I have helped clients with property on all the inhabited island of Hawaii, such as preparing Department of the Army Corp of Engineers Permits, State Water Quality Certification applications, best management practice plans, Draft and Final Environmental Assessments (EA), Special Management Area Permits, Shoreline Setback Approvals, Conservation District Use Permits, Coastal Zone Management Consistently Determinations, and facilitating the associated public hearing and notifications for projects along the shoreline.

Shoreline hardening is one of the main tools to deal with erosion crisis that provides certainty in the outcome. That outcome is the inevitable loss of sandy beach seaward and down drift of the armoring when constructed on a sandy eroding beach. This has been evidenced on the Island of Maui where nearly 40% of its sandy beaches have been lost over the last half-decade primarily due to inappropriate site development and shoreline armoring. Nearly 85% of Maui's remaining beaches are skinnier and narrower. But who needs a sandy beach on a tropical island who's economy is driven by tourism?

Sediment management and small scale beach nourishment (SSBN) are alternative tools to address erosion crisis. This 'soft' measure relies on using beach quality sand from inland sand dunes or naturally occurring sand, such as that found at stream mouths and outlets. *It is the only management response that protects both the development and the beach resource which attracts and serves as the root basis of our tourism economy.*

The State Department of Health (HDOH) testimony on H.B. 2145, dated February 3, 2016, properly notes that "Sand" (as presently defined in the federal Clean Water Act) is a listed water pollutant. As such, the agency is obligated to regulate the discharge of this pollutant into nearshore marine waters. The CWA Section 502 (6) lists sand as a pollutant and does not provide an exclusion for a particular type of sand.

TESTIMONY IN SUPPORT

Hawaii's sands includes both terragenic land based sources (such as volcanoes) and biogenic sources marine base sources (such as coral reefs) that are incorporated into this blanket, non-differentiating definition. But the definition also focuses and emphasizes **the term "pollutant"**, not necessarily "sand".

There are occasions when sand sourced from Maui's inland sand dunes or from stream mouths contains silt and clay that could adversely impact coral reefs and nearshore marine resources. However, the quality of sand and the amount of contaminants within it can easily and readily be controlled by placing conditions on the permits required to conduct soft shore protection activities. The County requires SMA and Shoreline approvals, whereas Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) requires either a Board or Department Approval for soft shore activities. Moreover, these activities trigger compliance with HRS 343 relating to Environmental Review because they occur either within the shoreline area, the conservation district, or as both is often the case.

DLNR OCCL previously had a State Programmatic General Permit but that expired and was not renewed, in part because HDOH was unable to submit documentation in a timely manner to its federal counterpart. Relying on DLNR OCCL to secure state-wide 401 WQC permits or placing sand above the high water mark when the beach has eroded to a building's doorstep is not an effective means of helping the numerous condominiums and private oceanfront homeowners who are facing severe erosion crisis.

The prudence of the Legislature is its collective common sense. The issue is not whether sand is a pollutant on an island with numerous long beautiful beaches, the issue is whether a particular patch of sand harbors pollutant's within it. Each County and the State DLNR OCCL have regulatory tools to ensure our nearshore waters and marine life are protected. Hawaii already has a stringent, difficult and complex oceanfront regulatory framework, even for soft shore protection measures.

I strongly encourage you to support SB 2245 SD1 Relating to Beaches so that oceanfront landowners have more response alternatives than simply building more seawalls. The only improvement to the bill that I would recommend is adding **"clean, screened, Class A, Maui Inland Dune Sand"** to the definition of sand that is not considered a water pollutant so that SSBN projects can more readily move through the DLNR OCCL and County permitting processes.

Thank you for your consideration of my comments!

Mahalo,



Thorne Abbott
Coastal Planners, LLC



Testimony Presented Before the
HOUSE COMMITTEES ON
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS
AND
ENERGY & ENVIRONMENTAL PROTECTION

Wednesday, March 23, 2016
9:30 am
State Capitol, Conference Room 325

By Chris Conger, President
Hawaii Shore and Beach Preservation Association

In consideration of
SENATE BILL 2245 SENATE DRAFT 1 RELATING TO BEACHES

Senate Bill 2245 Senate Draft 1 clarifies that beach sand is not a “water pollutant.” The bill proposes to amend Section 342D, Hawaii Revised Statutes, to exclude beach sand from the Definition of “water pollutant,” provided that it is naturally-occurring beach sand utilized on an adjoining beach for the purposes of beach erosion mitigation, sediment management, beach restoration, erosion control, or dune restoration.

The Hawaii Shore and Beach Preservation Association (HSBPA)* strongly supports Senate Bill 2245 SD

1. Government agencies, coastal land owners, and other stakeholders involved in beach management share a common interest in supporting innovative and environmentally-friendly solutions for managing coastal erosion to preserve our beaches and shoreline environments. Beach erosion is a problem throughout our state. Adaptive sediment management techniques such as beach scraping, stream mouth clearing, and sand bypassing and back-passing can be effective means for addressing beach erosion problems and threats to coastal infrastructure when surplus sand is available on a nearby section of beach.

It can be very difficult to implement these types of beach restoration projects in a timely, cost-effective manner because clean naturally-occurring beach sand is considered a “water pollutant” by the State, even if the sand is moved from one section of a beach to another and placed below the high water line. The HSBPA feels that the State’s interpretation of clean beach sand as a “water pollutant” for the types of projects described above is an unnecessarily strict interpretation of the Federal Clean Water Act (CWA). As a result of this interpretation, these types of projects are required to go through a CWA Section 401 Water Quality Certification (401 WQC). Often, these projects need to be implemented in a matter of days to weeks in response to a sudden erosion episode. The lengthy 401 WQC process, administered by the Department of Health, can take months to years making implementation of these types of environmentally benign projects time and cost-prohibitive. Excluding clean beach sand from the Definition of “water pollutant,” as described above, will support government and stakeholder efforts to manage and preserve our beaches.

*The Hawaii Shore and Beach Preservation Association (HSBPA, www.hawaiishoreandbeach.org), formed in 2014 is an organization of private sector, academic, and government professionals, students and local community members dedicated to the preservation and restoration of Hawaii's beaches and coastal environments. The HSBPA aims to bring together various members of the coastal community to foster dialogue and cooperation on beach and coastal resource conservation, management, and regulation; supporting professional development of chapter members; and providing education to students and community members on Hawaii's beaches and coastal environments.

Thank you for considering our testimony on this bill.



March 23, 2016

Representative Kaniela Ing, Chair
Representative Nicole E. Lowen, Vice Chair
House Committee on Ocean, Marine Resources,
& Hawaiian Affairs

Representative Chris Lee, Chair
Representative Nicole E. Lowen, Vice Chair
House Committee on Energy & Environmental Protection

Support for SB 2245, SD1 Relating to Beaches. (Amends the definition of "water pollutant" as used in chapter 342D, HRS, to exclude locally sourced beach sand that meets certain conditions.)

OMH/EEP Hearing: Wednesday, March 23, 2016, 9:30 am, Conf. Rm. 325

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF **supports SB 2245, SD1**, which amends the definition of "water pollutant" as used in chapter 342D, HRS, to exclude locally sourced beach sand that meets certain conditions.

The purpose of this measure is to exclude locally sourced beach sand from the definition of "water pollutant," which will enable the beneficial use of locally sourced beach sand to support sediment management projects to mitigate erosion on Hawaii's beaches with no negative impacts to water quality or marine and benthic resources beyond those occurring naturally due to wave action, currents, and littoral transport. According to the State Department of land and natural Resources, it is not the intent of this bill to circumvent the provisions of the Clean Water Act or the State's water quality regulations (sand used from an upland source or dredged from deeper off shore sand fields would continue to be regulated under the Section 401 Water Quality Certification process). Rather, the intent is to clarify that locally sourced beach sand is a naturally occurring material along Hawaii's beaches and does not constitute a water pollutant.

Thank you for the opportunity to present testimony in **support** of this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 19, 2016 5:20 PM
To: omhtestimony
Cc: mjellings@hawaii.rr.com
Subject: Submitted testimony for SB2245 on Mar 23, 2016 09:30AM

SB2245

Submitted on: 3/19/2016

Testimony for OMH/EEP on Mar 23, 2016 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carl M Jellings Sr	Individual	Support	No

Comments: STRONG SUPPORT

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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