



# Hawai'i Tourism Authority

Hawai'i Convention Center, 1801 Kalākaua Avenue, Honolulu, Hawai'i 96815  
Website: [www.hawaii-tourismauthority.org](http://www.hawaii-tourismauthority.org)

LINDA LINGLE  
Governor

REX D. JOHNSON  
President and Chief Executive Officer

Telephone: (808) 973-2255  
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Testimony of  
**Rex Johnson**  
President and Chief Executive Officer  
Hawai'i Tourism Authority

on  
**H.B. 2323, H.D. 1**  
**Relating to Beaches**

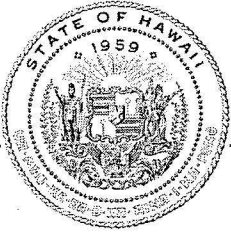
House Committee on Finance  
Thursday, February 21, 2008  
1:00 p.m.  
Conference Room 308

The Hawai'i Tourism Authority (HTA) opposes H.B. 2323, H.D. 1, which establishes a Resort Beach Restoration sub-account within the Beach Restoration Special Fund funded by a proviso that transfers up to \$2,000,000 from the Tourism Special Fund beginning on July 1, 2008 and ending on June 30, 2010.

The HTA's legislation provides that "[a]t least \$1,000,000 ... support the efforts of other state and county departments or agencies to manage, improve, and protect Hawai'i's natural environment and areas frequented by visitors." The HTA believes strongly in supporting the state's natural environment and as such, the HTA Board has budgeted \$5 million for its Natural Resources Program this year. Among its many policy decisions, the HTA Board decided to make this allocation of funds after taking into account, as required by the HTA law, "... the economic, social, and physical impacts of tourism on the State and its natural resources infrastructure." In addition, the HTA has established a Natural Resources Advisory Group (NRAG) which is comprised of individuals in the public and private sectors who provide assistance and advice to the Authority in its Natural Resources efforts.

While the HTA also believes that addressing beaches is an important issue, the responsibility for beach lands lies with the State Department of Land and Natural Resources (DLNR). Additionally, if this is a project looking for revenues from visitors for the restoration of beaches, an alternative funding source would be the general excise tax (GET) rather than that the transient accommodations tax (TAT). According to the Report of the 2005-2007 Tax Review Commission, 38 percent of the GET is borne by nonresidents, our visitors.

Thank you for the opportunity to provide these comments.



LINDA LINGLE  
GOVERNOR  
MARSHA WIENERT  
TOURISM LIAISON

## TOURISM LIAISON

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
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Statement of  
**MARSHA WIENERT**  
**Tourism Liaison**

Department of Business, Economic Development & Tourism  
before the

**HOUSE COMMITTEE ON FINANCE**

Thursday, February 21, 2008

1:00 p.m.

State Capitol, Conference Room 308

in consideration of

**HB 2323 HD1**

**RELATING TO BEACHES.**

Chair Oshiro and Members of the House Committee on Finance.

The Department of Business, Economic Development and Tourism has concerns and cannot support HB 2323 HD1. This legislation establishes a Resort Beach Restoration fund as a sub-account of the Department of Land and Natural Resources' (DLNR) Beach Restoration Special Fund, dedicates money in the Tourism Special Fund to the new Resort Beach Restoration Fund, and appropriates money to restore visitor area resort beaches.

The intent of HB 2323 HD1 is laudable and we fully concur that beach restoration is an important asset to the visitor industry and our residents. However, we do not support the creation of a new special fund, nor do we support any provisos to the Tourism Special Fund administered by the Hawaii Tourism Authority (HTA).

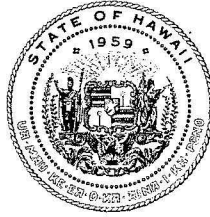
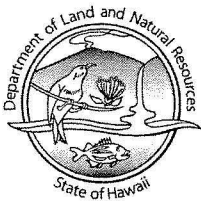
The HTA budgets for natural resource projects on an annual basis and works closely with DLNR to implement projects. The current HTA budget includes a \$5 million allocation for natural resources.

We believe that HTA, DLNR and private business can work together to satisfy the intent of the legislation. Rather than passing this bill, we suggest that the Legislature allow HTA and DLNR to work together to address funding for resort beach restoration without legislation.

We respectfully recommend that this measure be held by this committee.

Thank you for allowing me to comment on HB 2323 HD1.

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on House Bill 2323, House Draft 1 - RELATING TO BEACHES

**BEFORE THE HOUSE COMMITTEE ON  
FINANCE**

February 21, 2008

House Bill 2323, House Draft 1 proposes to establish a sub-account within the Beach Restoration Special Fund to be known as the Resort Beach Restoration Fund to be administered by the Department of Land and Natural Resources (Department). From July 1, 2008 to June 30, 2010, a maximum of \$2,000,000 may be transferred into the resort beach restoration sub-account from the Tourism Authority. The bill appropriates \$1,000,000 from the State General Fund for fiscal year 2008-2009 to be deposited in the Resort Beach Restoration Fund. Furthermore, the bill requires any funds released from the resort beach restoration fund be matched by non-state funds on a one-to-one basis. Additionally, the bill requires the Department to use at least 50 percent of the Hawaii Tourism Authority (HTA) funds that have been transferred into the resort beach restoration fund sub-account for beach restoration work within a "visitor area resort beach" which includes, but is not limited to Gray's Beach, located in Waikiki and Kaanapali beach, located on Maui. While the Department appreciates the intent of this bill, the Department nonetheless cannot support the \$1,000,000 General Fund transfer due to the fiscal impact it will have on the Executive Supplement Budget request. The Department defers to the HTA on the issue of any future transfer of funds to the Department for beach restoration.

In the event this bill moves forward, the Department offers the following technical comments. It appears that it is the intent of this bill is to fund and promote the use of non-state funds to be used for beach restoration at important resort destinations in Hawaii. The Department commends the efforts put forth by the authors of this measure, but has three (3) major concerns about this bill in its current language:

- (1) The Department does not feel that it is necessary to create a new sub-account for beach restoration as the goals and objectives of this measure can be implemented using the existing beach restoration special fund. If it is the intent of the legislature to provide support for beach restoration work at Waikiki and/or Kaanapali, this can already be accomplished with the existing beach restoration special fund, provided that sufficient funds are transferred into the beach restoration special fund over the next few budget cycles.

- (2) Even though a sub-account would be created within the existing beach restoration special fund to provide for beach restoration at resort areas like Waikiki and Kaanapali, this sub-account would inadvertently direct all state funds for beach restoration into only “visitor area resort beaches”, since the existing beach restoration special fund would likely be the preferred source of funds for beach restoration, rather than general or HTA funds, and
- (3) The Department currently administers the beach restoration special fund under Section 171-156, Hawaii Revised Statutes (HRS), for the purposes of beach restoration and conservation throughout the State. The Department is currently focusing significant time and funds to provide for beach restoration in Waikiki and is working on a three-year plan for beach restoration studies & projects in the State and is actively pursuing this issue. This plan will help provide the Department with guidelines for determining where beach restoration is most practical, feasible, environmentally/culturally sensitive, and desirable.

With the understanding that the Department may seek future general fund appropriations for beach restoration at Waikiki, the Department respectfully asks for the cooperation of the Legislature to continue working within the existing framework under Section 171-156, HRS.

## L E G I S L A T I V E

**TAXBILLSERVICE**

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** TRANSIENT ACCOMMODATIONS, Disposition for resort beach restoration fund

**BILL NUMBER:** HB 2323, HD-1

**INTRODUCED BY:** House Committees on Tourism and Culture and Water, Land, Ocean Resources and Hawaiian Affairs

**BRIEF SUMMARY:** Amends HRS section 237D-6.5 to provide that of the 34.2% of the transient accommodations tax (TAT) revenues deposited into the tourism special fund, the Hawaii Tourism Authority is authorized to transfer up to \$2 million to the resort beach restoration fund between July 1, 2008 and June 30, 2010.

Amends HRS section 171-56 to establish a sub-account within the beach restoration special fund to be known as the resort beach restoration fund, into which shall be deposited revenues from the proposed transfer of TAT revenues and any legislative appropriation. Specifies that no funds from this fund shall be released unless: (1) matched by non-state funds on at least a one-to-one basis; or (2) at least 50% of the funds released are funds transferred from the tourism special fund from the proposed transfer. Stipulates that funds transferred from the tourism special fund from the proposed transfer shall not be considered as non-state matching funds. Moneys in the resort beach restoration fund shall be used for the development and restoration of visitor area resort beaches, including maintenance of any improvements, debt service on any capital expenditures projects and contracting for these services.

Defines "visitor area resort beaches" as sandy resort beaches that provide public access, including but not limited to: (1) Gray's Beach located in Waikiki; and (2) Kaanapali Beach on Maui.

Appropriates \$1 million in general funds for fiscal 2009 to be deposited into the beach restoration fund.

Permits the Hawaii Tourism Authority to transfer \$1 million from the tourism special fund for fiscal 2009 to the resort beach restoration fund.

Appropriates \$2 million from the resort beach restoration fund for fiscal 2009 for the costs of visitor area beach restoration project including but not limited to: (1) Gray's Beach located in Waikiki; and (2) Kaanapali Beach on Maui.

**EFFECTIVE DATE:** July 1, 2025

**STAFF COMMENTS:** Unlike the original draft of this measure which earmarked 5% of the tourism special fund to be transferred to the beach restoration fund created by this measure, this draft merely authorizes the Hawaii Tourism to transfer up to \$2 million to the beach restoration fund over the next two fiscal years. Since the Tourism Authority will be able to judge whether or not there are other pressing needs for the funds in the tourism special fund, it will be the Authority that will be held accountable as to whether or not the resort beach restoration fund receives any TAT resources. It should be remembered

## HB 2323, HD-1 - Continued

that one of the priorities for the Tourism Authority and the tourism special fund is the promotion of Hawaii as a destination. With the slowing of the national economy, the Tourism Authority may need to make extraordinary efforts to market Hawaii to audiences other than the U.S. market.

It should be remembered that the whole point of setting a lump sum of money aside from the TAT in 1998 was that the promotion of the visitor industry should be left to professionals in the field. Consideration should be given to repealing the current earmarking of the first \$1 million for state parks and the trails and access program as it ignores the responsibility the Tourism Authority has to marketing Hawaii first with what funds it receives from the TAT.

More importantly, it should be remembered that by earmarking an amount in statute for this particular area reduces flexibility, curtailing the ability to respond appropriately to needs and market changes

More importantly, what should be noted here is exactly what was predicted when the legislature began setting up special funds with carve-outs from existing revenue streams. Because these funds are earmarked for specific purposes, they become targets to tack on seemingly related program expenditures either because they are of lesser priority and therefore could not garner support for funding out of the general fund or would meet with lesser resistance as the funds are already earmarked and out of the reach of lawmakers to be utilized for other unrelated activities.

As a result, funding programs that were never intended to be funded with the earmarked taxes provides a convenient way for lawmakers to hide the money from public scrutiny as no one other than the originally intended beneficiaries will pay attention to this misappropriation of funds. If resort beach restoration is truly of high priority for the use of public dollars, then it is like many other programs and projects which now are beneficiaries of earmarked special funds and should stand the test by being funded out of the state general fund. The likelihood would be almost nil when measured against the pressing needs of the health and education and welfare of the community. Many of these essential programs go only partially funded because resources are being siphoned off for lesser priority items.

While it may be argued that TAT dollars are being paid by visitors to Hawaii, it should be remembered that for every dollar that is spent to pay the TAT obligation, it is one less dollar that is spent in the state's economy. It is one less slipper purchased or one less restaurant meal, or one less catamaran ride taken by the visitors. So in the larger sense these are not "free" dollars, but dollars that could be flowing back into the economy to generate additional income for Hawaii's people and creating additional jobs for the community.

Digested 2/20/08



**HAWAI'I HOTEL & LODGING  
ASSOCIATION**

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30<sup>th</sup> Anniversary  
Are You Walking???  
May 17, 2008  
*(Always the 3<sup>rd</sup> Saturday in May)*  
[www.charitywalkhawaii.org](http://www.charitywalkhawaii.org)

**TESTIMONY OF MURRAY TOWILL  
PRESIDENT  
HAWAI'I HOTEL & LODGING ASSOCIATION**

**February 21, 2008**

**RE: HB 2323 HD 1 Relating to Beaches**

Good afternoon Chairman Oshiro and members of the House Committee on Finance. I am Murray Towill, President of the Hawai'i Hotel & Lodging Association.

The Hawai'i Hotel & Lodging Association ("HHLA") is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms and individuals. Our membership includes over 170 hotels representing over 47,300 rooms. Our hotel members range from the 2,523 rooms of the Hilton Hawaiian Village to the 4 rooms of the Bougainvillea Bed & Breakfast on the Big Island.

The Hawai'i Hotel & Lodging Association supports the intent of HB 2323 HD 1 Relating to Beaches. We recognize the importance of restoring and improving Hawaii's beaches. We also believe, that beach restoration can most effectively be done by using a combination of public and private funds.

We believe the bill is an imaginative vehicle to bring General Funds, Private Funds and Hawaii Tourism Authority ("HTA") Funds to bear on an important issue. The HHLA also supports this concept because the HTA is not legislatively required to fund this initiative. We believe in beach restoration and believe that the HTA Board was created to make these funding decisions and not to be directed by legislative proviso. We therefore believe the decision to provide funds to the Resort Beach Restoration Fund, is a decision to be made by the HTA. This bill seems to recognize that authority.

Finally, we urge you to clarify one potential point of confusion. As presently constructed, section 171-156(c)(2) seems to create a scenario where the entire public sector match is obtained from HTA. We believe the bill should clearly indicate that public funds other than from HTA be included in the public sector share.

Again, mahalo for this opportunity to testify.





TO: Chairman Marcus R. Oshiro  
Vice Chair Marilyn B. Lee  
Members of the Finance Committee

FROM: Ernest K. Nishizaki  
Executive Vice President and Chief Operating Officer  
Kyo-ya Hotels & Resorts, LP

**SUBJECT: SUPPORT FOR HB 2323, HD1 – RELATING TO BEACHES**

Date: February 21, 2008

Kyo-ya has been part of the Hawai'i community for more than 40 years. Our four Waikīkī properties, the Royal Hawaiian; Moana Surfrider, A Westin Resort; Princess Ka'iulani; and Sheraton Waikīkī, have an aggregate inventory of 4,168 hotel rooms and suites. We are among Hawai'i's largest employers with 3,500 employees.

The preservation of our precious natural environment is a vital concern for the residents of Hawai'i. Sadly, many of our beaches have begun to disappear over the years. We see this in Waikīkī and in many other locations throughout the state. Our beaches are an integral part of the lives of Hawai'i residents, and they attract visitors from around the world who help fuel the economic engine of our state.

Kyo-ya supports the Legislature's intent to provide funding for public beach restoration projects across the state. HB 2323, HD1 would establish a mechanism for such efforts. We believe beach restoration projects will enhance the beauty of our shores, revitalize the natural habitat, and expand recreational opportunities for all. We are pleased that the state is considering solutions to the problem and thank you for your consideration of this important legislation.

Mahalo for the opportunity to provide you with Kyo-ya's perspective. If you have any questions or comments, please feel free to contact me.

## FINtestimony

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**From:** Jeannine Johnson [jeannine@hawaii.rr.com]  
**Sent:** Tuesday, February 19, 2008 3:20 PM  
**To:** FINtestimony  
**Subject:** FW: Testimony in Strong Opposition to HB 2323 RELATING TO BEACHES  
**Attachments:** image001.jpg; oledata.mso; image002.emz

### ~~COMMITTEE ON FINANCE~~

Rep. Marcus R. Oshiro, Chair  
 Rep. Marilyn B. Lee, Vice Chair

HB 2323, HD1 RELATING TO BEACHES  
Hearing Thurs, Feb. 21, 2008, @ 1 pm in Conference Room 308

Aloha Chair Oshiro, Vice Chair Lee and Honorable Committee Members,

**I strongly oppose** HB2323 HD1 which establishes a Resort Beach Restoration Fund as a sub-account of the Beach Restoration Special Fund; allows a capped amount of funds from the Tourism Special Fund to be transferred to the Resort Beach Restoration Fund; and appropriates moneys from the Resort Beach Restoration Fund to pay for visitor area resort beach restoration projects in the state, including Gray's Beach and Kāanapali beach. As I stated in my testimony below, HB 2323 was amended to give the owners of the Sheraton Waikīkī special treatment.

In the Waikīkī Beach Reclamation Agreement dated October 19, 1928, between the Territory of Hawai'i and beachfront property owners in Waikīkī, the general public was assured the right to use such portion of any beach built within the 75 feet shoreward of the highwater mark. However, the City has allowed hotels to build within this 75 foot setback, and continued development so close to the shoreline by hotels like the Sheraton have caused the erosion of our beach. What was Gray's Beach in the 1940s is now a just sea wall.

The Sheraton's owners had earlier proposed a plan to restore Gray's Beach by constructing three T-shaped rock groins spanning 500 feet of shoreline and widening the beach fronting its hotel. At the Honolulu City Council's Zoning Committee hearing on February 5, 2008, to consider the same owners' proposed project to expand and construct pools, water slides, bars, decks, and lawn areas within the shoreline setback, they claimed that the beach restoration project wasn't even being considered. How then does special legislation like HB2323 HD1 get drafted, if not to favor multi-millionaire owners of hotels and resorts like the Sheraton? OHA maintains that the beach restoration and this project are the same owner, the same project area, and overlap each other. In fact, OHA Administrator Clyde Nāmu'o has stated "OHA is bothered by this tender irony in that this Applicant has eradicated our beneficiaries (and our state's) public trust beach, proposes to not only continue to do more projects in protected areas, but then contemplates to 'restore' the beach, thereby potentially changing the shoreline boundary and creates an exclusive use of this area. This is absurd."

Although the owners of the Sheraton receives \$375 a night for its 1,695 rooms in the Sheraton Waikīkī and \$515 a night for its 528 rooms in its Royal Hawaiian Hotel, they now want the public to pay to restore the beach fronting the Sheraton as a result of building in the mandated

75 foot setback. This special interest bill, which only supports multi-millionaire hotel and resort owners, must be held.

**Mahalo.**

*Jeannine*

Jeannine Johnson  
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Ph: 373-2874 / 523-5030 (w)  
Email: [jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)  
"PUPUKAHI I HOLOMUA"  
(Unite in Order to Progress)

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**From:** Jeannine Johnson [mailto:[jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)]

**Sent:** Saturday, February 09, 2008 10:19 PM

**To:** 'TACtestimony@Capitol.hawaii.gov'

**Cc:** 'Rich Figel'; 'Elizabeth Reilly'; 'Ann Marie Kirk'; 'Scott Werny'; 'Marti'; 'Miwa Tamanaha'; Senator Sam Slom; 'repberg@capitol.hawaii.gov'; 'Rep. Barbara Marumoto'; 'Rep. Gene Ward'; senhemmings@Capitol.hawaii.gov; 'senhooser@Capitol.hawaii.gov'; 'George Downing'; 'jasonj@oha.org'; 'granta@oha.org'; 'Kristen Consillio'; 'ngarcia@honolulu.gov'; 'rtam@honolulu.gov'; 'tapo@honolulu.gov'; 'dmdelacruz@honolulu.gov'; 'gokino@honolulu.gov'

**Subject:** Testimony in Strong Opposition to HB 2323 RELATING TO BEACHES

COMMITTEE ON TOURISM & CULTURE

Rep. Ryan I. Yamane, Chair

Rep. Joey Manahan, Vice Chair

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Rep. Ken Ito, Chair

Rep. Jon Riki Karamatsu, Vice Chair

HB 2323 RELATING TO BEACHES

Hearing Monday, Feb. 11, 2008, @ 8:30 am in Conference Room 325

Dear Chairs Yamane and Ito and Vice Chairs Manahan and Karamatsu,

I **strongly oppose** HB2323 which establishes a visitor area beach restoration special fund; dedicates moneys in tourism special fund to visitor area beach restoration special fund for 1 year only; and appropriates moneys from the special fund to pay for visitor area beach restoration project on Waikiki beach fronting the Royal Hawaiian Hotel.

At the Honolulu City Council's Zoning Committee hearing on February 5, 2008, on Kyo-ya Hotels & Resorts' planned renovations to its Sheraton Waikiki Resort (see my testimony below), Councilmember Nester Garcia very pointedly asked the representative of the Department of Permitting and Planning (DPP) if the DPP gave any consideration of the cumulative effects of development in Waikiki. The answer was "no."

✘

In the letter dated January 25, 2008, against the proposed renovations, Office of Hawaiian Affairs' Administrator Clyde Nāmu'o states: "OHA is bothered by this tender irony in that this applicant has eradicated our beneficiaries (and our state's)

public trust beach, proposes to not only continue to do more projects in protected areas, but then contemplates to 'restore' the beach, thereby potentially changing the shoreline boundary and creates an exclusive use of this area. This is absurd."

Waikīkī was a beautiful beach and the home of my ali'i. Although the Sheraton is right on the water, what was Gray's Beach in the 1940s is now a sea wall. This picture of the area in front of the Sheraton can be found at <http://people.mills.edu/jspahr/waikiki.pdf> along with this quote: "The beach soon disappears into the water (there is no "public sidewalk" despite the sign) and the Sheraton has built up a sea wall with a walkway that they restrict to their guests." The continued development so close to the shoreline by hotels like the Sheraton have caused the erosion of our beach and restricted the public's access. These cumulative effects are, disastrously, not even considered by the DPP.

As you may know, the beach fronting the Royal Hawaiian Hotel, also owned by Kyo-ya, does not need restoration. However, the beach in front of the Sheraton does. I believe House Bill 2323 is Kyo-ya's attempt to increase the beach in front of the Sheraton without having to pay for it. Owners of beachfront property who build into the setbacks mandated in our State and Federal laws should be forced to finance the restoration of those beaches fronting their own properties.

Mahalo for your consideration.

*Jeannine*

Jeannine Johnson  
5648 Pia Street  
Honolulu, Hawai'i 96821  
Ph: 373-2874 / 523-5030 (w)  
Email: [jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)  
"PUPUKAHI I HOLOMUA"  
(Unite in Order to Progress)

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**From:** Jeannine Johnson [mailto:[jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)]  
**Sent:** Sunday, February 03, 2008 7:13 PM  
**To:** 'cushijima@honolulu.gov'; 'rtam@honolulu.gov'; 'tapo@honolulu.gov'; 'dmdelacruz@honolulu.gov'; 'ngarcia@honolulu.gov'; 'gokiño@honolulu.gov'  
**Cc:** 'gkim@honolulu.gov'; 'jasonj@oha.org'; Senator Sam Slom; 'repberg@capitol.hawaii.gov'; 'Donna Wong HTF'; 'Scott Werny'; 'Rep. Gene Ward'; 'Rich Figel'  
**Subject:** Zoning Committee Testimony

Jeannine Johnson  
5648 Pia Street, Honolulu, Hawai'i 96821  
Phone: 373-2874 (h) / 523-5030 (w)  
February 3, 2008

*Via email*

ZONING COMMITTEE  
Rod Tam, Chair  
Todd K. Apo, Vice Chair  
Donovan M. Dela Cruz, Member  
Nestor R. Garcia, Member

2/19/2008

Gary H. Okino, Member

Hrg: Regular Meeting on Tuesday, February 5, 2008, at 9 am  
**RESOLUTION 08-21 – SPECIAL MANAGEMENT AREA USE PERMIT (SMP)  
 AND SHORELINE SETBACK VARIANCE (SV) FOR PORTIONS OF MASTER  
 PLANNED IMPROVEMENTS AND RENOVATIONS TO THE ROYAL  
 HAWAIIAN HOTEL AND SHERATON WAIKIKI HOTEL (2007/SMA-78 AND  
 2007/SV-11).** (Applicant: Kyo-ya Hotels & Resorts, LP)

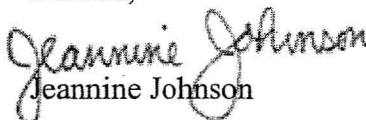
Dear Chair Tam, Vice Chair Apo and Honorable Councilmembers,

I **strongly oppose** Resolution 08-21 for Applicant Kyo-ya Hotels & Resorts' proposed project to expand and construct pools (the beachside pool and the resort pool), water slides, bars, decks, and lawn areas all within the shoreline setback.

I have read the comments by Office of Hawaiian Affairs' Administrator, Clyde Nāmu'o, in his letter dated January 25, 2008, and hereby incorporate by reference each and every compelling point contained therein, especially the potential impacts that this project would have on our cultural resources, natural resources, water quality, and effects on traditional and cultural rights and practices in the Waikīkī area. In his letter, Mr. Nāmu'o correctly cites all the State and Federal laws, as well as SMA rules and regulations, which this project would violate. As we have seen with the recent Supreme Court SuperFerry decision, cumulative and secondary impacts must be considered. The loss of the public's access to the beach fronting this project will be lost or severely reduced, and the cumulative effect of this project with the substantial loss of beach access currently island-wide will result in significant adverse effects to our residents.

My uncle was a beachboy for the Outrigger Hotels for over 50 years and my father would fish Waikīkī in the 50s (see picture). Growing up in the 60s, my 'ohana would regularly spend weekends in Waikīkī from Queen's Surf to the Outrigger, enjoying the sun, sand, surf and gathering limu. Unfortunately, Waikīkī has become inaccessible to our residents and especially to Native Hawaiians whose rights to traditional and customary access and gathering of natural resources are expressly protected by the Hawai'i Constitution and case law.

Mahalo,

  
 Jeannine Johnson

cc via email: Jason Jeremiah, OHA  
 Sen. Sam Slom  
 Rep. Lyla Berg  
 Rep. Gene Ward  
 Hawai'i Thousand Friends  
 Surfrider Foundation  
 Beach Access Hawaii

## FINtestimony

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**From:** \*Scott Werny\* [clearwater@hawaii.rr.com]  
**Sent:** Thursday, February 21, 2008 5:59 AM  
**To:** FINtestimony  
**Subject:** 2/21/2008 HB2323 Agenda; 1 pm in Conference Room 308  
**Categories:** Printed

### Testimony in Strong Opposition to HB 2323 RELATING TO BEACHES

#### COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

#### HB 2323, HD1 RELATING TO BEACHES

Hearing Thurs, Feb. 21, 2008, @ 1 pm in Conference Room 308

Aloha Chair Oshiro, Vice Chair Lee and Honorable Committee Members,  
Mahalo for the opportunity for input.

I **strongly oppose** HB2323 HD1 which establishes a Resort Beach Restoration Fund as a sub-account of the Beach Restoration Special Fund (BRSF); allows for funds from the Tourism Special Fund to be transferred to the Resort Beach Restoration Fund (RBRF); and appropriates moneys from the Resort Beach Restoration Fund to pay for visitor area resort beach restoration projects in the state, including Gray's Beach and Kā'anapali beach.

Our beaches are public property. We should not cloud this by creating a different category of beach called a "Resort Beach" and give it preferential treatment. Resort structures along the shoreline should not be subsidized by state dollars to help their corporate profits, even if it is with matching funds. HB 2323 was amended to give the owners of the Sheraton Waikīkī special treatment.

As I understand, Kyo-ya is also applying for a setback variance to build improvements, including pools, waterslides, and bars, onto what should be a beach area. HB2323 could then be used to seek money from the RBRF to maintain these hotel improvements.

Furthermore, it should be noted and fully considered that all attempts to "restore" the beaches in Waikiki have been done in a piece meal fashion that have failed miserably and left many parts of Waikiki beach an ugly mess of concrete walls, rock pile groins, and missing sand. The Surfrider Foundation Oahu Chapter encourages the development of a comprehensive master plan to cover all of Waikiki's beaches, created with adequate input from the entire community. Such a master plan should enhance beach access and ocean water quality, should not affect surfing waves, should not create more safety issues, should not threaten existing aquatic wildlife, and with rising sea level now a reality, should include planned shoreline setback retreat. Perhaps money from the BRSF could be used to help fund such a master plan for Waikiki.

Finally, if this bill does move forward, I request that consideration be given to adding stipulations that funds cannot be used unless shoreline access requirements will be clearly met. State law HRS §205A-26 requires us to provide "adequate access" for the beach. As the resort owners add improvements and seek to further develop their hotel grounds, they should be required or at least encouraged to provide more parking for residents in order to provide adequate access. Waikiki has become so difficult for

residents like us to visit because of the difficulty of finding proximate parking, that our access has in fact become severely restricted, so much that we tend to avoid the area. Waikiki used to be reserved for royalty...it is sad, but ironic that we've slowly turned it into a place that is reserved for rich tourists. We can change this if we start taking steps in the right direction.

Mahalo for your leadership,  
Scott Werny  
Co-Chair Surfrider Foundation Oahu Chapter

[www.surfrider.org/oahu](http://www.surfrider.org/oahu)

*The Oahu Chapter works actively to improve ocean water and beach quality, to keep and open access to the ocean for all to enjoy, and to assure that all development on our island is responsible by having minimal impact on our coastal environment.*

From: Noa Napoleon (freeoceanaxs@yahoo.com)  
To: noaslight@yahoo.com  
Date: Thursday, February 21, 2008 9:33:44 AM  
Subject: HB 2323 Re: Resort beach restoration

Noa Napoleon  
1750 Kalakaua Ave #103  
Hon, Hi 96826

Date: 2/ 21/ 08

TO: House Committee on Finance  
Chair: Marcus Oshiro

Re: HB 2323 "Resort beach Restoration"

I strongly oppose this bill; Waikiki beach is a public beach, not a "resort beach," as the title of this bill would suggest. The 1928 Waikiki Agreement dedicates the beaches fronting the hotels to the public by creating and requiring a seventy five foot set back line. The intent was to establish and to delineate the public area from the hotel private areas, insuring the dedication of the public beach was protected in perpetuity. This agreement was binding on all parties as a condition of the ownership. In the mid sixties DOT Public lands Commissioner had ordered hotels "back to their properties" several times after getting complaints about Hotels renting out beach equipment on the public beach. The hotels denied any involvement with concessionaires while simultaneously attempting to say the Waikiki Agreement was void. They where wrong according to DOT records. Recent letters issued to Waikiki hotels warning them that Waikiki beach is not to be used for commercial purposes unless it is authorized by DLNR, are being totally ignored. DLNR Chair Laura Thielen, recently issued this letter (statement) in response to my



question about hotels setting up umbrellas and lounge chairs on the public sector of the beach.

"A hotels cannot conduct any commercial activity beyond its property boundary, unless it has been issued a disposition (e.g. a lease, permit, or concession contract) by DLNR with jurisdiction and authority to grant that disposition."

If this bill were to pass I can assure this committee the Sheraton hotel will proceed to treat Greys beach as private beach just as other hotels on the shore front are albeit without permits from DLNR (this is known as the grandfather clause). The Sheraton is currently placing bulky beach equipment on the public sector of the beach thereby treating the area as if it was a private beach just as other hotels have in total contradiction of the commercial prohibitions outlined in the 1928 Agreement. Hawaii Administrative Rules categorically prohibits "commercialism of any kind" "in or on Waikiki beach."

Besides the issue of commercial encroachment and the fact that hotels continue to encroach into public sector of the beach, I strongly reject any and all attempts to add sand to the shoreline in Waikiki. As a surfer and one who has surfed in these areas all my life, I have seen the effects of sand replenishment first hand. In a nutshell sand fills ruin the reef's and they ruin the surf! I've included letters and news paper articles relating to the situation in Waikiki. You will see that the hotels not DLNR are the ones regulating commercial activity on Waikiki beach (See RFP).

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Never miss a thing.

Board of Land and Natural Resources.  
1151 Punchbowl St.  
Hon, HI 96813

Re: DOBOR parking proposal / HAR Chapter 13-233 "motor vehicle and parking rules."

Submitted by: Noa Napoleon

Date: 1/25/07

Aloha Board Members. I represent the coalition that addressed this board in 2002, when the BLNR created the Wai Harbor Ad Hoc committee of "stakeholders" to address the impact of privatization. The parking proposal is being offered to address what are basically separate (unrelated) issues. The parking proposal was intended (according to DOBOR staff) to correct the problem of all day and overnight parking of commercial vehicles. I felt it was important to point out to you that despite the current harbor rule that says "No commercial vehicles without permit," somehow, DOBOR is overlooking (some say allowing) up to 5 professional surf schools to simultaneously converge on the heli port area to teach surf lessons. This activity includes staging of professional lessons and parking their "commercial" vehicles all day, and storage of those vehicles overnight. This signals to us that certain small business (at least 5) have professional dealings with DOBOR, and are being treated as permittees and or stakeholders, even though they are without actual permits. As professional "constituents" of DOBOR, "blue card companies" such as these should not be allowed to use the harbor commercially unless they are properly outfitted with commercial permits, and even then I feel the heli port area should not be subject to commercial permitting of any kind. What I'm interested in is creating a harbor plan that closes loop holes in the rules that are being exploited by commercial entities seeking to utilize the facility for business. DOBOR has repeatedly said they cannot respond to complaints on surf schools because they are short staffed. This makes enforcement of rules almost impossible, which is problematic since we're talking about rules and protecting the area as a recreational facility. Given the amount of surf schools that "must" use this area to conduct their business its more critical than ever that the rules are clear on the prohibited activity. The Hilton for example has a professional relationship (is working with) several professional surf schools who park their company vehicles at the Ala Wai harbor and at Dukes beach, which is a city and county park (I'm told citations were issued on them for this). DOBOR is treating these companies like stakeholder's and seem to be inclined to overlook the infractions. How is this issue treated in the parking plan? If DOBOR officials really want to curb all day and overnight parking why are they simultaneously assigning commercial privileges to their blue card companies who are some of the very ones parking all day (this is well documented). The proposal has been premised on the need to correct this problem but it does not explicitly prohibit the surf school's from all day parking. So despite rules that now say no commercial parking without a permit, this activity does now and will continue unabated because of the so-called vagueness in the current rules. There are efforts underway as we speak to amend Hawaii Admin. Rules governing blue cards and ORMA boundaries (so maybe this is where surf schools will be addressed).

If the Hilton beach contract is any indication, CONTRACTED PARKING is a bad idea.

Its a very slippery slope if we're talking about DOBOR being able to manage a parking contract with any real efficiency. I say this because of the Marion Higa report which points to procurement and contracting iproblems within this division, exposing the sad truth unfortunately.

In the summer of 2005 C&K had been awarded a five year contract by DLNR to operate a commercial beach service within the Dukes beach area, which is a public beach. Dukes Beach, which fronts the Hilton, is located directly adjacent to the Ala Wai harbor parking lot (the Heli Port) area. A year after C&K opened up for business they were allowed to use a bankruptcy process to immediately reconstitute themselves under the Hilton which had been awarded the remainder of that five year contract by a federal judge. After just one year into the contract Land officials made the decision not to revoke the permit from C&K as is normal policy but to work out a situation with the Hilton that would allow a referral situation with C&K which lets them and others like them operate under the Hilton master permit as separate entities. This process was finally questioned by the Land division after 4 separate commercial entities had been warned and cited for commercial encroachment on Dukes beach (the area delineated by the contract). The Hilton was one of those entities cited for encroachment. Land Administrator Russel Tsujii had told the BLNR that these entities were "unaware" they had been breaking the law. This, even after they were warned in writing both by land division and DOBOR, that Dukes beach was not to be used by multiple or separate concessionaires. Just prior to these warnings going out all four companies had wrongly assumed that they were under the Hilton's beach contract. This assumption was the result of Land division telling everyone including me, that these businesses are "party to the Hilton contract," which they were not because the Hilton (BY THEIR OWN ADMISSION), said they de-activated the permit! It was later told to all parties in writing that they must be Hilton employees to work under the Hilton contract but this was never enforced. During this time the Hilton managers were telling me that they never activated the surf instruction portion of the contract. Land division tried to tell the BLNR that they were "unaware that the Hilton de-activated the contract." This was a bold faced lie.

One of the four commercial entities that was cited for encroachment continues to operate commercially on Dukes beach today even though they are without land use permits. The Hilton beach contract should have been revoked as soon as the violations were noted by Mr. Tsujii, especially after citations were issued, but the violations were ignored and no further action was pursued by DLNR. As one who had taken direct interest in the RFP process just prior to the C&K bankruptcy, I thought it was very conspicuous that C&K's personal debt was paid in full by the Hilton hotel, especially given the fact that the permit originally awarded to C&K was to be let to a non-profit! The Hilton is not a non-profit and the total amount of the years rent for C&K was only \$21,600. Do we know how many months they had gone in the hole? Was it three months past due, five months, or was it a whole year that they were allowed to skip on rent? Finally how did the Hilton end up paying \$127,000?; That's \$106,000 more than the whole years rent? The point is DLNR appears to be allowing the Hilton to violate the beach contract with impunity.

This sort of procurement violation does have bearing on the Ala Wai Harbor parking area because of the precedence it established. DOBOR and Land division could ensure the situation is repeated or duplicated once a private parking contract runs into trouble and defaults on rent. In the likely event that multiple surf schools seek to be

included in the parking plan, they would suddenly have "standing" to challenge the non-commercial harbor users as stakeholders at the Harbor. DOBOR would do better to implemented rules tha reflect original priorities (clear legislative intent) regarding small boat harbors. Rules therefore should not be vague on the issue of commercial surf schools. The rules cannot create loop holes that end up giving wide swath to those who would abuse the beach, they should be enforceable in otherwords. I point this out because these companies enjoy professional relationships with DOBOR staff. They are naturally inclined to support any DOBOR initiatives especially if they include provisions for surf schools, otherwise its all about playing it close to the edge with DOBOR and the public. If Boating officials are allowed to do contracted parking at the Ala Wai I hope they do not also implement stakeholder contracts with "multiple concessionaires" on the principle that these are "stakeholders," this would contradict the purpose of the rules. Without clear rules governing blue cards unpermitted commercialism will further undermine the principle that the Ala Wai Harbor is a recreational harbor. I believe it is entirely possible to do a fee increase at the Ala Wai without resorting to RFP and possibly the sort of default that lead to the C&K bankruptcy. The ideas we submitted as a coalition back in 2002 are still workable should you feel like looking at them. We wanted to discuss the possibility of joining the heli port area to the old Dukes beach, which is a city and county beach. The stewardship process is an offshoot of the adopt a park plan offered by DOBOR. Thank you.

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