

LINDA LINGLE  
GOVERNOR OF HAWAII



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

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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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

On House Bill 2332 - Relating To Public Lands

**BEFORE THE HOUSE COMMITTEE ON  
WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS**

February 8, 2008

House Bill 2332 proposes to require conservation district use permits for commercial activities on unencumbered state land. The Department of Land and Natural Resources (Department) supports the intent of the bill to regulate commercial activity on our unencumbered public lands, but does not support this measure in its current form.

House Bill 2332 attempts to regulate commercial activity on unencumbered public lands by requiring a Conservation District Use Permit (CDUP) when commercial operators "transit" across unencumbered lands as a means to facilitate the activity. Requiring a CDUP for such activity is an ineffective and inappropriate tool for accomplishing the desired regulatory results.

Furthermore, fines imposed by the bill are not consistent with the existing or proposed civil fines under Chapter 171, Hawaii Revised Statutes (HRS). The Department recommends an alternative approach that will more effectively eliminate unauthorized commercial use of public land. Currently, under Section 171-6(15), HRS, the Board of Land and Natural Resources can only impose a nominal fine of up to \$500 per day for unpermitted commercial activity violations. House Bill 3178, an Administration measure currently being considered by the Legislature, proposes to increase those fines up to \$2,500 for a first violation to a maximum of \$10,000 for subsequent violations. The Department urges that the Legislature support and pass House Bill 3178, or its companion measure Senate Bill 3100, to address the problem of unauthorized commercial use of public lands to improve enforcement.

A CDUP is used to regulate activities in the conservation district that constitute a land use under Chapter 183C, (HRS. Transiting across unencumbered lands, whether for commercial or noncommercial purposes, is not a land use as defined under Chapter 183C, HRS. Section 183C-2, HRS, defines "land use" as:

- (1) The placement or erection of any solid material on land;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or

- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

As such, a CDUP is an inappropriate tool for regulating the transiting of public land since that activity is outside purview the CDUP process.

Moreover, the State's unencumbered lands are not all within the Conservation District. Since a CDUP can only be used to regulate land use activities in the Conservation District, expanding its use to unencumbered lands outside of the Conservation District would constitute an *ultra vires* act.

As drafted, this measure is overly broad and could subject commercial taxis and tour operators that drop tourists off at the beach or other natural attractions on unencumbered lands, to the proposed fine. The Department believes such overly broad application of the measure is unwarranted and imprudent.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of  
**THEODORE E. LIU**  
**Director**  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES &  
HAWAIIAN AFFAIRS**  
Friday, February 8, 2008  
8:30 AM  
State Capitol, Conference Room 312  
  
in consideration of  
**HB 2332**  
**RELATING TO PUBLIC LANDS.**

Chair Ito, Vice-Chair Karamatsu, and member of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports the intent of the bill to regulate commercial activity on state unencumbered public lands, but does not support this measure in its current form

We leave the substantive matters of this bill to be addressed by the Department of Land and Natural Resources (DLNR). However, DBEDT would like to voice concerns about how this measure may negatively impact the issuance of film permits for unencumbered public property, which encompasses most of the state filming locations that we are able to offer to both local and off-shore productions.

Currently, DBEDT has a Memorandum of Agreement (MOA) with DLNR for the issuance of film permits as well as a blanket Conservation District Use Permit (CDUP) for filming specifically within the Conservation District. These agreements call for mutual cooperation in the issuance of film permits given the importance the film industry

to the state and its economy. They also include specific conditions to which the productions must adhere in order to engage in the filming activity. These agreements allow DBEDT's Film Industry Branch (FIB) to work closely with the various DLNR agencies to issue film permits for public property under DLNR's management. The proposed additional layer of permitting and requirement of a CDUP contained in this measure will negatively impact the FIB's ability to respond in a timely manner to applications for film permits.

Hawaii's ability to develop its film industry depends largely on our reputation as a film friendly location and that requires that we continue to ensure that a wide variety of state controlled locations are available for filming and that film permits can be processed in a timely manner. Our film industry expenditures contribute to the growth of Hawaii's economy, contributing more than \$200 million annually. If locations start to dwindle and the process becomes too cumbersome for production they will choose alternative locations to take their projects.

In addition, Hawaii now has a new tax credit for film that since its inception has generated more than \$200 million in direct expenditures in the state. If securing locations for filming or the film permit process itself becomes too onerous, then film productions will not come to Hawaii despite the attractive tax incentive.

Thank you for this opportunity to testify.



**The Chamber of  
Commerce of Hawaii**

Since 1850

TESTIMONY TO THE HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES &  
HAWAIIAN AFFAIRS  
FRIDAY, FEBRUARY 8, 2008, AT 8:30 A.M.  
ROOM 312, STATE CAPITOL

RE: H.B. 2332 Relating to Public Lands

Chair Ito, Vice Chair Karamatsu, and Members of the Committee:

My name is Christine H. Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii is in opposition to HB No. 2332.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

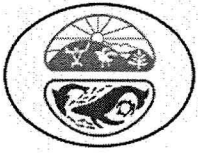
H.B. No. 2332 purposes to amend Chapter 171 HRS to prohibit a person from transiting unencumbered public lands for any commercial activity purpose without a conservation district use permit unless the unencumbered land is within an area that is regulated through a management plan that permits the commercial activity.

Transiting the beach is essentially whenever someone walks across the beach. It seems that the intent of this legislation is to prohibit commercial activities from having their customers walk across a public beach without an approved Conservation District Use Application. It is unclear from the bill what the specific problem is that the bill is attempting to address. For example, is the concern the overuse of natural resources? If so, how and what are the specific impacts that are attributed to the commercial activity? Or is the concern the use or overuse of public facilities such as parking lots, restrooms, comfort stations, etc. at public beach parks?

This issue was raised in the past with the Department of Land and Natural Resources; however, the real problem is if you can define "transiting or walking across public lands" as a land use that should be regulated by a Conservation district use application pursuant to Chapter 183C HRS. The land use triggers the need for the CDUA, not the fact that that activity is commercial. In addition, not all public beaches are in the conservation district. The conservation district starts at the certified shoreline and extend makai. What happens in situations where the transiting activity occurs mauka of the certified shoreline? Who determines where the shoreline is on any particular day or month? As you can see, it creates an enforcement nightmare.

While we support the intent of the bill in attempting to address and mitigate "impacts" that commercial activities have on public resources, we believe that the mechanism for managing commercial uses of natural resources should be well thought out to ensure equity and enforceability.

Thank you for this opportunity to express our views.



# Conservation Council for Hawai'i

Testimony Submitted to the House Committee on Water, Land,  
Ocean Resources & Hawaiian Affairs

Hearing: Friday, February 8, 2008  
8:30 am Room 312

Support for HB 2332 Relating to Public Lands

Aloha. The Conservation Council for Hawai'i supports HB 2332, which prohibits transiting unencumbered public lands for any commercial activity purpose without a conservation district use permit unless the unencumbered land is within an area that is regulated through a management plan that permits the commercial activity.

We often receive calls from concerned citizens about the increased use of public lands for commercial uses, including transiting unencumbered state land. This bill seeks to address the rising conflicts and stresses on the land and resource. The CDUP requirement is reasonable for areas not already managed for commercial use.

Mahalo nui loa for the opportunity to testify.

Sincerely,

Marjorie Ziegler



***Working Today for the Nature of Tomorrow!***

Telephone/Fax 808.593.0255 • email: [info@conservehi.org](mailto:info@conservehi.org) • web: [www.conservehi.org](http://www.conservehi.org)

P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814

***Hawai'i Affiliate of the National Wildlife Federation***

President: *Julie Leialoha* \* Vice-President: *Nelson Ho* \* Secretary/Treasurer: *Kim Ramos* \* Directors: *Fred Kraus, Ph.D.* \* *Douglas Lamerson,*  
*George Robertson* \* *Claire Shimabukuro* \* *Helene Takemoto* \* *Mashuri Waite* \* Executive Director: *Marjorie Ziegler*



Hanalei-Ha'ena Community Association  
Post Office Box 789  
Hanalei, HI 96714

February 7, 2008

Committee On Water, Land, Ocean Resources & Hawaiian Affairs  
Rep. Ken Ito, Chair  
Rep. Jon Riki Karamatsu, Vice Chair

Re: Testimony on HB 2332  
Hearing Date: February 8, 2008, 8:30 am

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Aloha Representatives Ito, Karamatsu and Committee Members,

The Hanalei-to-Ha'ena Community Association submits this testimony in support of HB 2332.

HB 2332 is an important step in filling the regulatory gap that has led to significant abuses of both the public lands and the communities in which those lands are located. Because existing law regarding the transiting of unencumbered public lands for commercial purposes is unclear, the Hanalei bay, estuary, river and community have been exploited by commercial tour boat companies and other commercial enterprises that conduct disruptive activities without any meaningful government oversight.

In the 1990s, more than fifty unlicensed tour boats operated from our community with no significant regulation of the environmental or socio-economic impacts of those activities. While those activities decreased significantly when the state mandated that such activities be conducted from commercial harbors elsewhere on Kauai, in 2007 non-permitted tour boat activity resumed. Without immediate state regulation of the land-based component of the activities of commercial tour boat companies, there is little that stands in the way of a repetition and expansion of the abuses of the 1990s.

HB 2332 would provide the necessary regulation. It would recognize that commercial operations, such as commercial tour boat operations, do indeed create individual and cumulative impacts that warrant the scrutiny and oversight that would be provided by public hearings and use permits. The Hanalei-to-Ha'ena Community Association therefore encourages that you strongly support such legislation.

We also ask that you consider three changes that we believe are needed to achieve the goals of HB 2332.

1. We believe that it is essential that the findings required for the granting of a use permit be clarified, and therefore propose that Section 171(b) be modified as follows:

*“(b) When determining whether to grant a conservation district use permit for a person to transit unencumbered public lands for the purpose of a commercial activity, **no such permit may be granted unless the board shall consider whether has found, pursuant to a public hearing, that:***

- (1) The commercial activity, **both individually and as a part of cumulative commercial activity,** will **not** have unreasonable **direct, indirect or secondary** adverse health, environmental or socio-economic effects, **except as such adverse effects are minimized to the extent practicable and are clearly outweighed by compelling public interests;** **and***
- (2) The commercial activity will **not** unreasonably burden public agencies to provide streets or roads, sewers, water, drainage, and police, **and would not be detrimental or injurious to the general welfare of the community.**~~or~~*
- (3) ~~There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to in paragraphs (1) and (2).~~”*

2. We believe that, in light of the substantial profits that are associated with non-permitted commercial activities such as commercial boat tours, the maximum penalty proposed in Section 171(d) (\$500) would be insufficient to incite compliance, and should therefore be raised to at least \$5,000 (an amount that is of the same magnitude as the daily revenue of non-permitted commercial boat tours).
3. In light of the urgent need for this legislation, and in order to avert potentially dangerous confrontations between unlicensed commercial operators and others, the effective date of this legislation (specified in Section 4) should be June 1, 2008 rather than January 1, 2009.

Mahalo for your leadership on this matter, which is very important to the well-being of our community.



Carl Imparato  
President, Hanalei-Ha'ena Community Association  
808-826-1856  
carl.imparato@juno.com

cc: Rep. Hermina M. Morita



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**From:** Noa Napoleon [mailto:freeoceanaxs@yahoo.com]  
**Sent:** Thursday, February 07, 2008 3:14 PM  
**To:** WLHtestimony  
**Cc:** Rep. Tom Brower  
**Subject:** WLH hears HB 2332 tomorrow at 8:30 am

Noa Napoleon  
1750 Kalakaua Ave Apt. 103  
Hon. HI 96826

Testimony in support of HB 2332

Dear Representative Ito and members of WLH,

Thank you very much for the opportunity to support HB 2332. This bill is desperately needed and long overdue in my view, so I applaud you for hearing it today. The bill we are discussing today seems to have been designed to close loop holes in the law that have been exploited by roving (commercial) surf and kite schools. I would ask you to consider the Waikiki situation as well. Apparently there are many similar measures being contemplated by legislators this year. My concern with all of this is that if bills of this nature do not speak specifically to the grandfather system in Waikiki, such bills will have the effect of creating loop holes instead of closing them. DLNR officials are in the habit of misstating the law when complaints are called to their attention. This has the effect of thwarting any and all legal action, and even basic complaints brought to their attention tend to go nowhere. Such misstatements usually go like this; "The state cannot enforce the commercial prohibition laws in Waikiki because to do so would "unfairly target the hotels, who are not the only ones breaking the law." In other words, if the state allows the hotels in Waikiki to operate commercially on a public beach without permits, then it must also exempt all other similar illegal activity!!! "Waikiki is open to all on first come first serve basis," we must "share and share alike." Such statements are common place within DLNR, thus, without specific wording that addresses Waikiki shoreline hotels (and the grandfather system), this bill would simply create more confusion (gridlock) making it even more difficult for the public to know what the law is at any given time. Moreover, enforcement efforts at DLNR will continue to see all of the citations they issue on unauthorized commercial activity, thrown out of court for LACK OF RULES!! By requiring a plan to be implemented beforehand local communities will have a chance to voice their concerns. This is not too much to ask of DLNR officials, in fact, it's their job to protect Hawaii's natural resource laws! The problem of loop holes was discussed in some detail in the CSV Consultant study which focussed on user conflicts and capacity issues. I recommend you take time to look at this study. It can be accessed at the DOBOR web site. To review official statements made by DLNR Chair about Waikiki see attachments. Thank you for your time.

WLH,

The following are excerpts of official testimony regarding the Waikiki encroachment situation. Peter Young (outgoing DLNR Chairperson) had refused to call for enforcement and or for permitting when I raised the question about hotels on the Waikiki shoreline needing commercial permits to operate commercially on a public beach. Rep. Bertram's bill (HB 1538), was debunked by Mr. Young, the bill seemed redundant but still legislators seemed to agree with its intent, passing it over to a rules committee. The opinions offered by Peter Young and Administrative staff of DLNR represent the Divisions "official position on the matter." These opinions totally contradict state law. DLNR Administrators are thus exploiting the loop holes these kinds of statements afford them as they attempt to fend off accusations by the public about misfeasance, dereliction of duty, favoritism, etc. This makes it impossible to expect enforcement of the law in my view. May I remind you that my Representatives. Sen. Trimble, Rep. Brower, Sen. Ihara, have expressed to me that they will not be taking a position on this matter.

The following is official testimony of the Chairperson of the Board of Land and Natural Resources. These statements were offered last year in response to a letter asking for clarification on the rules governing surf schools and hotel use of a public beach.

House Bill 1538....

Proposes to make hotel and resort use of public lands, and particularly beaches, illegal when the public is excluded, and permissible if the use of public lands is also open to the public and any equipment provided to a guest is removed within thirty minutes of disuse. The Department of Land and Natural Resources (Department) opposes this Bill because we believe the measure is unnecessary.

Response given by Peter Young (DLNR Chair)....

"It appears that the measure is seeking to prohibit the exclusive use of state lands by hotels and resorts that derive an economic benefit from that use. By capitalizing on the enhanced value that is conveyed by the appearance of exclusivity and privacy, hotels and resorts that provide beach equipment in exclusive areas to its guests benefit economically. That kind of use of state lands constitutes "commercial activity" under the HAR Section 13-221-2 and is prohibited without a permit under HAR Section 13-221-35. A violation under this rule would be subject to a fine of 500 per day, plus charges for damages and administrative costs."

"House Bill 1538, moreover, only targets improper activity by hotels and resorts without addressing the larger issue of comparable improper uses by other businesses, such as commercial ocean recreation operators, that affect the

general public's access to and use of state lands."

In a nother letter Dated March 9, 2007 DLNR Chairperson again offers opinions that run counter to state law.

"With respect to Mr. Napoleon's concerns that Waikiki hotels should be issued permits for their use of Waikiki public beach area, we know no instance where a Waikiki hotel is currently encroaching upon the Waikiki public beach area. To the best of our knowledge, no hotel is occupying public lands at Waikiki beach, nor are any of their concessionaires. Hotel guests use the public beach area, as do Hawaii residents and tourists and visitors from non-Waikiki beach hotels. It is true that the hotels rent beach equipment to their hotel guests, such as towels, lounge chairs, umbrellas, boogie boards, and the like, but their hotels guests utilize the beach in the same manner as do our residents, tourists and visitors from non-Waikiki hotels."

"The states current position is that no Waikiki hotels should be issued permits for the use of Waikiki public beach area; it should be left to be enjoyed by all, hotel guests, residents, tourists and visitors, on a first come first come basis, share and share alike."

In a nother letter dated on Oct 3, 2007 the new Chair Laura Thielen explains the situation without adding personal comments. "This letter responds to your telephone inquiry to my staff regarding how far from a Waikiki hotels property boundary line a hotel may past for the hotels commercial activities."

"A hotel 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 the Division of the DLNR with jurisdiction and authority to grant that disposition. Please be advised that our response is limited to property under the jurisdiction and management authority of DLNR. Many areas of Waikiki beach are under the jurisdiction of the City and County of Honolulu, which may have its own policies and practices regarding use of its property. Should you have any questions on the above, please contact OAHU District Branch of Land Division at 587-0433."

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**From:** Barbara Robeson [mailto:robessonb001@hawaii.rr.com]  
**Sent:** Thursday, February 07, 2008 11:43 AM  
**To:** WLHtestimony  
**Cc:** Rep. Hermina Morita  
**Subject:** Testimony: HB 2332

**Testimony Supporting HB 2332 Relating to Public Lands**

Please provide correct number of copies to Committee members.  
WLH Committee, 2-8-08  
8:30 AM Room 312

Dear Chair Ito and Committee Members:

Unlicensed, unregulated and unmanaged commercial uses are having unprecedented negative impacts on unencumbered State lands. The transiting of public lands by commercial activities such as boating, surf schools, movie tours, etc. interfere with traditional uses such as fishing and diving, and other public recreational uses of our coastal resources.

Please pass HB 2332 to ensure that our resources are effectively managed through the CDUA process.

Thank you,  
Barbara Robeson

~~~~~  
Barbara Robeson  
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