

Testimony submitted by: Noa Napoleon

In support of **SB 2196**

Relating to: "Commercial Activity on Ocean Waters"

House Committee on JUDICIARY
Chair Waters
Vice Chair Oshiro

LATE TESTIMONY

I'd like to preface my comments today by reminding this committee that SB 2196, HB 2332, and HB 839, are among several bills being opposed by DLNR this year. I find this to be problematic because while DLNR denounces these bills they have completely failed in my opinion to offer any real solutions to what Legislators are calling a "twenty year old problem!" HB 2332 was opposed by DLNR because it was deemed too-broad, that it would've deprived otherwise legal companies of the opportunity to continue to operate. As you may recall DLNR deputy Russell Tsuji claimed that the sort of commercialism occurring on our public beaches does not technically constitute "land use" for which CDUP would be required. I tried to point out to chair Waters that these are excuses, and that the correct term or the term we should be concerned with are generally, or broadly considered, "public lands." If you recall Rep. Waters had asked DLNR to explain what method of enforcement they currently use and the answer given was "blue cards." The matter of blue cards was not discussed in any detail at that hearing which is unfortunate because in fact this issue is at the heart of the problem. I also tried to explain to Chair Waters that the City and County has an effective method of dealing with abuse. The County curtails over-use, abuse, and or user conflict, by issuing a revocable transiting permit, which is immediately revocable upon violation. By this the city and county demonstrates its dedication to upholding the public's rights to use a public beach or park. DLNR's rejection of SB 2196 and HB 2332, only confirms to me that DLNR is culpable in this whole problem of unregulated commercialism. Boating Division is currently tasked with the responsibility of regulating not just commercial boating activity, but all ocean related activity including the type that originates from neighborhoods, private marinas, and parks, all of which have become staging areas that impinge on the public areas. DOBOR is partly to blame for this because years ago the division had decided to overlook state law requiring permitting on certain types of industries. Some of the problems DOBOR has encountered (to be fair) are of a different nature than previously envisioned by the drafters of the current Administrative Rules. Land Division for example seems to be in constant conflict with DOBOR, over whose office should get involved in issuing permits and or citations where the divisions intersect. Waikiki is a perfect example of this. The Chairpersons rebuttal to SB 2196 and HB 2332, does not address how DLNR would otherwise propose to close the loop holes on the commercial industry, especially the sort originating from non-boating or private properties such as

hotels. The governor's package (which the Chair did not reference in her testimony) does increase civil penalties for violations occurring on public lands, but then fails to identify the loop holes that created the problem in the first place. This is critical because with this particular division the smallest omission could leave the door open for the abuse to continue, first by the shoreline hotels in Waikiki, and next by everyone else, including DLNR officials. As long as the hotels are allowed to break the law, other's will no doubt want the same treatment, especially those who feel entitled to such exemptions, which is everybody thanks to DLNR.

The huge problem facing DLNR right now is how to close the loop holes without drawing the wrath of the commercial community. Dozens of companies will no doubt feel they have been stripped of a right they really never had in terms of permits or authorization by the division. Since DLNR is the division tasked with planning community hearings pursuant to Chapter 91, they must be forced to redo the program. This sort of planning has not happened nor was this something DLNR would have thought to do on its own. It wasn't until I began to point out problems to lawmakers that DLNR started scrambling to address the issue. To go back now and say to everyone, "hey we gotta do community planning" is going to be very difficult because for one such a process must level the playing field in terms of who gets permits. DLNR must now set caps on how many permits are issued for a given area. This is difficult to imagine because the Division continues to claim that staff shortages are hampering their ability to manage even the boating programs. I'm concerned that if this bill expands DOBOR responsibilities to include additional ones, how they will manage this with any efficiency, except to hire additional staff and perhaps to appoint a special regulatory agent to deal exclusively with commercial permitting. If SB 2196 would include wording to this effect I'm sure it would simplify DOBOR's approach to regulation. If not I predict that nothing lawmakers decide this year will have real impact on the situation. DLNR will have found a way to convince you that they are finally dealing with this problem when in reality they have been about maintaining the status quo. I have stated in other testimony that I believe the Governors package to be faulty because it fails to address the grandfather situation in Waikiki. What about the hotels? Are they going to be subject to permitting?? Given the obvious attempt to ignore the situation in Waikiki I feel its only right to ask this committee to ask DLNR officials if the hotels on the Waikiki shoreline are the target of any of their legislation this year? If not, why not? Waikiki cannot be ignored because for one no other area draws more complaints, in fact within this one area are some of the worst examples of abuse in the entire state. DLNR has directly contributed to the problem of commercial abuse in that they have actively advocated for what has amounted to a whole industry being exempt from permitting requirements. Please consider amending this bill to require that the DOBOR blue card program be subject to Chapter 91 and to permitting, more along the lines of the City and County "transit permit," which is revocable etc. The bill would also need to very specific in identifying certain "prohibited" areas. Kaena and Hanalei on Kauai, as well as Kaaknapali, Kailua,

Waikiki, and Waianae are areas that are being impacted by unregulated commercialism. These areas should be subject to regulation, and this should be precipitated by a master plan, which would then be subject to approval by the Land Board etc. Mahalo!