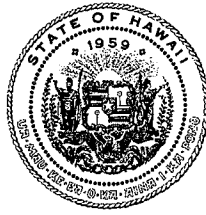


LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
JUDICIARY AND GOVERNMENT OPERATIONS**

Friday, February 27, 2009

9:30 a.m.

State Capitol, Conference Room 016

**In consideration of
SENATE BILL 1088, SENATE DRAFT 1
RELATING TO PUBLIC ACCESS**

Senate Bill 1088, Senate Draft 1 would amend the definition in Chapter 115, Hawaii Revised Statutes (HRS), of obstruction for access to public property and creates a private right of action for persons to enforce the prohibition of obstruction. The Department of Land and Natural Resources (Department) defers to the Department of the Attorney General on the legal implications associated with the amendments that would establish a new provision to provide for civil action by aggrieved individuals.

The Department recognizes and supports authorized public access to areas that are managed for various recreational activities and that provide traditional and cultural pursuits, and the need to further public access opportunities.

However, the Department has concerns with a change in the law that may create the potential for a dramatic increase in frivolous or misguided civil actions related to unmaintained features that may not qualify legally as a "public transit area" or "public transit corridor" and that due to their condition may create public safety issues. The measure also provides for recovery of litigation costs and attorney's fees for the party filing a legal action if successful, but does not provide any similar relief for a landowner if they successfully protect against a frivolous or misguided civil action.

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

BEACH ACCESS HAWAII

www.beachaccesshawaii.org

Contact: Rich Figel
801 Kainui Drive, Kailua, HI 96734

Phone: (808) 262-5073
Email: richfigel@gmail.com

Date: Feb. 25, 2009

To: Senate JGO Committee

Re: TESTIMONY IN SUPPORT OF SB1088

Aloha,

As co-founder of Beach Access Hawaii, a group that represents hundreds of concerned citizens throughout the state, I urge you to pass this bill.

SB1088 would be an important step forward in protecting public access to our shorelines. On Oahu, there is currently NO law that establishes minimum requirements for public rights of way. All we have in the statutes are "suggested guidelines," according to the Honolulu City Council attorney. There is nothing to stop homeowners on private or public beach side roads from putting up gates, which could deprive residents of the only available access in that area.

This bill would at least make it more feasible for citizens to legally challenge attempts to cut off what little public access remains in some shoreline areas. It would also make private homeowners think twice before putting up gates to deny access to neighbors.

In Kailua and other islands, we now have semiprivate beach areas that have been created by the proliferation of locked gates for long stretches of beach. This is wrong, and clearly goes against state law which says all beaches belong to the people of Hawaii.

What we really need is for the state and counties to come up with a joint, comprehensive shoreline management plan that includes beach access. Although SB1088 does not address bigger issues such as that, it might buy us some time before it's too late to stop more gates and fences from going up on beach paths that have been used for many years by residents. And once those gates go up, it's nearly impossible to have them taken down.

Mahalo,
Rich Figel
Beach Access Hawaii



Office
1149 Bethel St., Ste. 415
Honolulu, HI 96813
877.585.2432 toll-free ph/fx

Mailing Address
P.O. Box 37368
Honolulu, HI 96837

www.KAHEA.org
kahea-alliance@Hawaii.rr.com

**S.B. 1088 Public Beach Access
Room 016, 9:30 am
February 27, 2009**

Aloha Chairman Taniguchi and members of the Senate Committee on Judiciary and Government Operations,

KAHEA strongly supports S.B. 1088 to improve enforcement of the public's existing right to access the beach and inland recreational areas. With this bill, the Legislature will help to ensure the public's longstanding right to access, which is quickly being eroded by increasing development and inadequate enforcement.

KAHEA is a network of over 6,000 concerned citizens, including kūpuna, cultural practitioners, and ocean users, working to protect Hawai'i's unique natural and cultural resources. Perpetuation of Hawai'i's unique culture – including sustenance fishing, surfing, and gathering – is rooted in the public's ability to safely access our valuable natural resources mauka-to-makai.

SB 1088 amends Hawai'i Revised Statutes Section 115 to improve the ability of citizens to directly enforce the provisions of the chapter. In 1974, the Legislature recognized that "urban development, especially tourism development, is having a limiting effect on accessibility to the shorelines. ... [T]his effectively bars the general public from the beaches and results in Hawai'i's people being deprived of what visitors may use."¹ Thus, the Legislature passed H.B. 104 in order "to guarantee the right of public access to the sea and shorelines and transit along the shorelines."²

In the years since the codification of HRS sec. 115, local residents have relied on this and other public access laws to successfully uphold the public's fundamental right to open and safe access. Unfortunately, in that same timeframe, the resources available to enforce the public's rights have only waned, as the pressure of development has continued to increase. The practical result of inadequate enforcement is the erosion of the public's fundamental rights to access shorelines and inland recreational areas, despite clear legal protections to the contrary.

Adding a citizen suit provision to the law can become an important tool for upholding the public's rights. In a comprehensive review of citizen suit provisions throughout the

¹ Committee on Water, Land Use, and Development, House Journal, Standing Committee Report No. 35, H.B. 104, page 760 (1973).

² Committee on Ecology, Environment, and Recreation, Standing Committee Report 1042-74, H.B. 104, Senate Journal, page 1158 (1974).



Office
1149 Bethel St., Ste. 415
Honolulu, HI 96813
877.585.2432 toll-free ph/fx

Mailing Address
P.O. Box 37368
Honolulu, HI 96837

www.KAHEA.org
kahea-alliance@Hawaii.rr.com

U.S., researchers found that citizen suit provisions actually improve overall compliance with legal requirements. "In a time of limited government resources, enforcement through court action prompted by citizen suits is a valuable dimension of environmental law."³ To stem the loss of the public's right to access in Hawai'i, we support amending HRS sec. 115 to empower citizens to sue for the violations of public access rights outlined in the chapter.

This provision, however, will not likely increase the burden on the court system or encourage frivolous lawsuits, as was argued when citizen suit provisions were first introduced as an enforcement tool. In practice, however, researchers have confirmed that citizen suits actually reduce the burden on government enforcement agencies by providing an alternative method of enforcement.⁴ In addition, citizen suit provisions, such as the one proposed in this bill, that require a written notice prior to filing with a court allows offenders the opportunity to remedy violations early. This has helped to focus the courts' attention on those situations truly in need of legal intervention, while still ensuring broad compliance with the law.

If you have any questions or concerns about this bill, please do not hesitate to contact me at your convenience. This bill, if passed, will go a long way to improving protections for shoreline and mauka public access rights.

Mahalo,



Marti Townsend, Esq.
Program Director

³ May, James, "Now More Than Ever: Environmental Citizen Suit Trends," 33 ELR 10704, 10705 (2003).

⁴ *Ibid.* at 10708.

From: Stuart Coleman [scoleman@surfrider.org]
Sent: Wednesday, February 25, 2009 5:56 PM
To: Sen. Brian Taniguchi; Sen. Dwight Takamine; JGO Testimony
Subject: Strong support for SB 1088 -- Public Beach Access

Brian T. Taniguchi
Dwight Y. Takamine
Committee on Judiciary and Government Operations

Stuart Coleman
scoleman@surfrider.org
2121 Algaroba St., #1107
Honolulu, HI 96826

Friday, February 27, 2009 09:30 AM

Strong support for SB 1088 -- Public Beach Access

My name is Stuart Coleman, and I am the Hawaiian Islands Field Coordinator of the Surfrider Foundation. We have more than 1500 dues-paying members in Hawaii and almost 60,000 across the country.

I strongly support this bill because beach access is free to all people in Hawaii, and it's in our mission to protect the public's rights of way. We want beaches that are modeled after the North Shore, not Hawaii Kai and Portlock, where many wealthy homeowners have blocked access to the shoreline.

The Surfrider Foundation is part of the Beach Access Hawaii Coalition, and we represent many different environmental groups and members, and we strongly support this bill.

Aloha, Stuart

Stuart H. Coleman
Hawaiian Islands Field Coordinator
The Surfrider Foundation
scoleman@surfrider.org
808-942-3841

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 5:07 PM
To: JGO Testimony
Cc: andrea@malamakauai.org
Subject: Testimony for SB1088 on 2/27/2009 9:30:00 AM

Testimony for JGO 2/27/2009 9:30:00 AM SB1088

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Andrea Brower and Keone Kealoha
Organization: Malama Kaua`i
Address: 4900 Kuawa Road Kilauea, HI.
Phone: 808-828-0685
E-mail: andrea@malamakauai.org
Submitted on: 2/25/2009

Comments:

Access to culturally and environmentally significant areas has become a major issue on Kaua`i. Unfortunately, the desire of a handful of private landowners has led to loss of access to important mauka and shoreline areas. This has resulted in community divisions that could have been prevented had our laws clearly defined the public's right. Malama Kaua`i supports the proposed amendment of the definition of obstruction for access to public property, as well as the creation of a private right of action for a person to enforce the prohibition of obstruction. The private right of action is necessary to enforce the right of the public to access, which will otherwise be violated without repercussion, as it has in the past. Please uphold the obvious public good and pass this bill into law.

February 26th, 2008.

S.B.1088 - Relating to Public Access

Senate Committee on Judiciary and Government Operations

Testimony by: Evan Silberstein, 3315 East Manoa Road, Honolulu, Hawai`i, 96822

Chairman Takiguchi, Vice Chair Takamine and Distinguished Members:

Thank you for taking the time to read this testimony. I am in strong support of S.B. 1088. This bill presents a tremendous opportunity for you to support the people of Hawai`i in accessing our natural and cultural resources for health, recreation, family time, spiritual communion and many other coastal and open space activities. I strongly urge you to please pass S.B. 1088 to uphold and improve access to our most treasured resources while granting the citizens of Hawai`i an opportunity to enforce the laws that are designed to protect their rights.

S.B. 1088 improves enforcement of existing shoreline access protections currently provided for under H.R.S. § 115. This law was passed in 1974 because legislators recognized that "development pressures were undermining the public's right to access the shoreline and inland recreational areas." It is clear that those development pressures have only grown stronger, while the ability of the State to protect the rights of our citizens has waned due to population expansion, administrative burden, and the increase of the very same development pressures H.R.S. § 115 was designed to alleviate. Passage of this bill will help to fulfill the public right to beach access, while lessening the burden on state enforcement officers.

Beach front developments, military installations, private gates, no trespassing signs, and high parking fees all stand where paths once invited people to the shore. The time is now to insure that the rights granted to the people of Hawai`i are protected for many generations to come. In places where access has been ongoing, access should be maintained and more importantly, protected. Our Hawai`i Constitution has established this precedent which has repeatedly been upheld by our State's Supreme Court and supported by previous and numerous actions of this Legislature.

The proposed amendments to H.R.S. § 115 are fair, just and timely. There is a clear need and well established government purpose in protecting rights of public access. They are in proportion to the needs for public access that have been created by development pressure described above. They affect all property owners equally and they protect the rights of the public whose ability to reach the coast and inland recreation areas have been significantly impaired and need additional safeguards and enforcement mechanisms.

I thank you for your time and support of this issue and urge you to please pass S.B. 1088.

Sincerely,

Evan Silberstein

William S. Richardson School of Law

2009 Juris Doctorate Candidate

From: ginger grinpas [ginger.dania@gmail.com]
Sent: Thursday, February 26, 2009 8:59 AM
To: Sen. Brian Taniguchi; Sen. Dwight Takamine; JGO Testimony
Subject: Strong support for SB 1088 -- Public Beach Access

Brian T. Taniguchi
Dwight Y. Takamine
Committee on Judiciary and Government Operations

ginger grinpas
ginger.dania@gmail.com
1375 miloiki street
honolulu, HI 96825

Friday, February 27, 2009 09:30 AM

Strong support for SB 1088 -- Public Beach Access

I strongly support this bill because...by law, beaches belong to the people and should not be allowed to be obstructed

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 26, 2009 7:26 AM
To: JGO Testimony
Cc: mimhawaii@hawaii.rr.com
Subject: Testimony for SB1088 on 2/27/2009 9:30:00 AM

Testimony for JGO 2/27/2009 9:30:00 AM SB1088

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Miriam Rappolt
Organization: Individual
Address: 783 N Kalaheo Ave Kailua, HI
Phone: 808 263 7829
E-mail: mimhawaii@hawaii.rr.com
Submitted on: 2/26/2009

Comments:

Our family had access to Kailua Beach via L'Orange Place for 27 years until the residents decided to install a gate barring entrance. Now when our children and grandchildren visit they are forced to walk on a narrow and dangerous path along Kalaheo Avenue in order to reach the public access. This situation has created a great deal of resentment in the neighborhood, all of which could have been avoided. Also, if an emergency were to arise, rescue vehicles face another obstacle to access of beach areas.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 26, 2009 5:36 AM
To: JGO Testimony
Cc: kaimanacd22@yahoo.com
Subject: Testimony for SB1088 on 2/27/2009 9:30:00 AM
Attachments: testimony SB1088_2.doc

Testimony for JGO 2/27/2009 9:30:00 AM SB1088

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Caren Diamond
Organization: Individual
Address:
Phone:
E-mail: kaimanacd22@yahoo.com
Submitted on: 2/26/2009

Comments:

Caren Diamond
P. O. Box 536
Hanalei, Hi. 96714

February 25, 2009

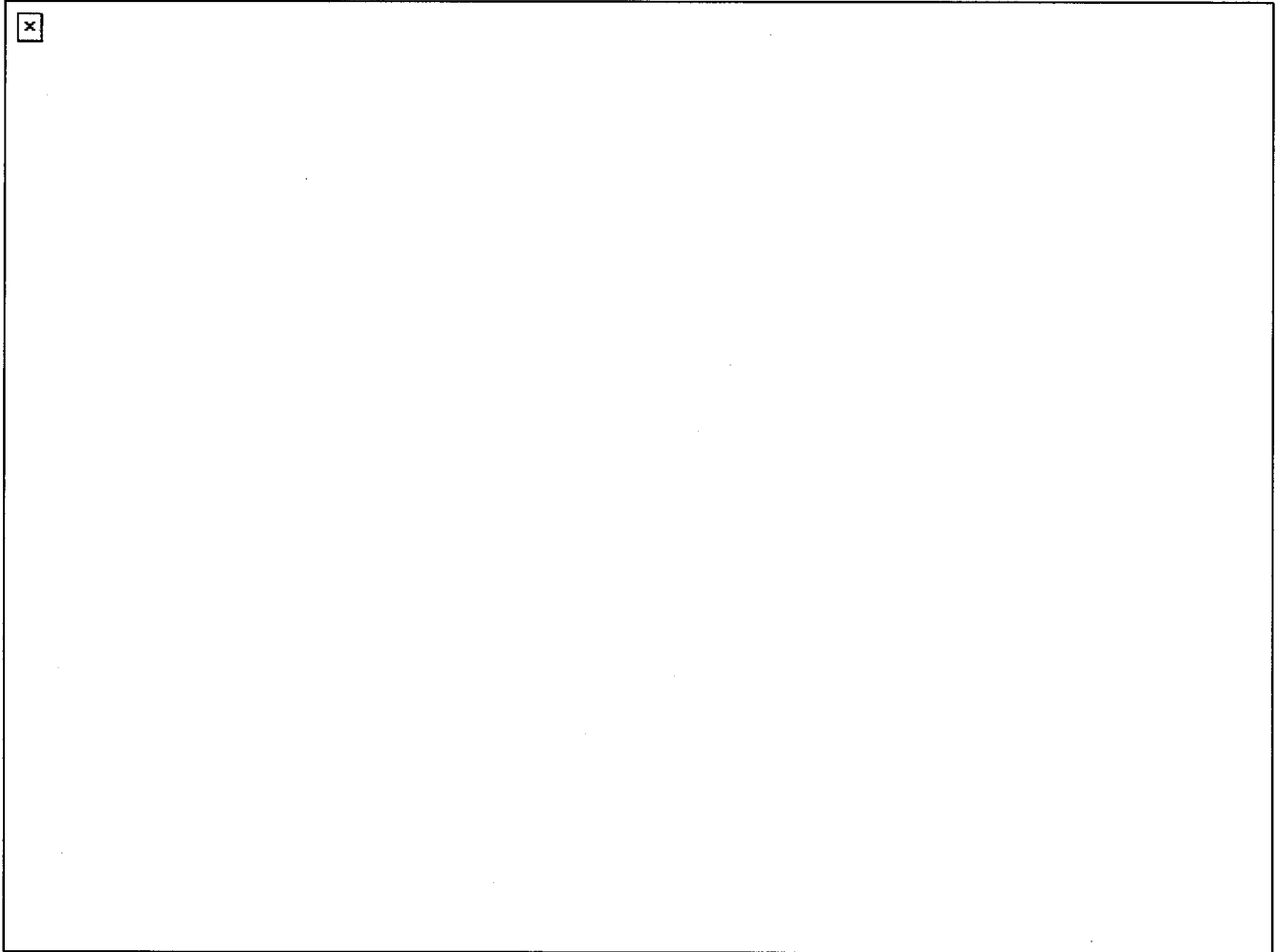
Testimony in Strong Support SB 1008

JGO

Room: 016

Hearing Date 2/27/2009
9:30:00 AM

Aloha Committee Members,



The beach from Naue public access, Wainiha, Kauai

Beach Access has diminished greatly in the last 10 years. Privatization of our finest state resources has occurred on our public beaches. Kauai's North Shore beaches were among the state's finest treasures, the jewels of both our residents and visitors. For the last 10 years now, I have documented the changes and conditions on our beaches, photographing every beach in Wainiha and Haena on a regular basis.

We have documented continuous public beach loss, loss of access getting to the beach, as landowners block traditional access' and loss of safe lateral access along our beaches. In all cases the beach loss is due to human induced changes, Kauai's beaches are fenced seaward of the high water, signs say keep out, private property, kapu... while the landowners are copiously planting salt tolerant vegetation on what was our pristine beaches, often installing irrigation .

Our documentation shows how beaches are privatized with vegetation, how quickly the beach changes from being a resource for all, to being private property for the landowner.

The DLNR, and OCCL, have been too busy "with more important issues" than to worry about our beaches. Enforcement has been dismally inadequate.

Often lack of clear authority, has the county and state, both wait for the other to enforce, while the public beach is privatized due to unclarity of jurisdiction, it is an accurate reflection to say " enforcement by both state and county has not kept up with the assault on our public beaches."

We strongly support adding "vegetation" to be included in the section Physical impediments that may prevent traversing as this is the single most way our beaches are disappearing. They have become private oasis of thick masses of vegetation, rather than beaches. We have seen and documented massive plantings across much of our sandy beaches, the landowners keep planting more and more seaward. As enforcement has been absent, the problem has exponentially grown to one of massive beach loss. I would be happy to share some of my ongoing documentation with the Senators .

I strongly support the addition of lawsuits by individuals, as our state and county have other important priorities, enforcing beach access has not occurred. Protecting the publics beach

resources is fundamental to our community.

We also support the addition of language that clarifies transit area and public right away. If we can't use it, we lose it. I love the beach, it makes me so sad to see it almost gone. These changes can add the tools necessary to change that balance , please support SB1088. Our beaches are not private, yet they are being privatized. Please join me in protecting our rights to this invaluable public resource.

Mahalo Nui, Caren Diamond

Testimony for JGO 2/27/2009 9:30:00 AM SB1088

Conference room: 016

Testifier position: oppose

Testifier will be present: No

Submitted by: Carol Philips

Organization:

Address: Kamehameha Hwy Haleiwa, Hawaii

Phone: 808-637-2977

E-mail: carolphilips1@gmail.com

Submitted on: 2/26/2009

Comments:

As a former professional bodyboarder and a life long lover of the ocean public access to the shore line is one of the most Aloha filled aspects of living in Hawaii. As a long time resident of the North Shore where we have pretty good public access to the shoreline – if I had to give up an access point I would not. I would like most surfers trespass, because we know in our hearts that we have a God given right to ride waves. I remember when I lived at Velzyland, people used to walk across my yard all the time to access the beach. I remember children washing off with my hose before getting on the bus with their bodyboards and thinking how much I love living in Hawaii. Please support this bill it is pono.

Warmest Aloha,
Carol Philips

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 7:07 PM
To: JGO Testimony
Cc: bevbinney@earthlink.net
Subject: Testimony for SB1088 on 2/27/2009 9:30:00 AM

Testimony for JGO 2/27/2009 9:30:00 AM SB1088

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: beverly binney
Organization: Individual
Address: 1336 mokulua dr HI
Phone: 808 2288053
E-mail: bevbinney@earthlink.net
Submitted on: 2/25/2009

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 8:13 PM
To: JGO Testimony
Cc: rayneregush@aol.com
Subject: Testimony for SB1088 on 2/27/2009 9:30:00 AM

Testimony for JGO 2/27/2009 9:30:00 AM SB1088

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Rayne Regush
Organization: Individual
Address: Kauai, Hawaii
Phone:
E-mail: rayneregush@aol.com
Submitted on: 2/25/2009

Comments:

I urge you to support this bill which will help protect one of the most important natural resources of our islands -- the beach.

Many coastal landowners of properties adjacent to public right-of-ways, try to assert ownership over the public areas by installing gates, false signage, or growing vegetation intentionally in the public domain.

This amendment to the definition of obstruction for access to public property along with creating a private right of action for individuals to enforce the prohibition of obstruction, will help prevent property owners from intentionally closing off public access ways.

All too often, enforcement agencies are understaffed and therefore unresponsive. SB 1088 provides for notice to the violator and an opportunity to cure before litigation. It ensures that needless litigation will not occur.

Please protect the public's beach access rights by supporting this bill. Coastal access is a vital asset benefiting both residents and visitors alike.

Mahalo,
Rayne Regush
Kauai

From: Marvin Heskett [mhesketts@mac.com]
Sent: Wednesday, February 25, 2009 10:36 PM
To: Sen. Brian Taniguchi; Sen. Dwight Takamine; JGO Testimony
Subject: Strong support for SB 1088 -- Public Beach Access

Brian T. Taniguchi
Dwight Y. Takamine
Committee on Judiciary and Government Operations

Marvin Heskett
mhesketts@mac.com
419A Atkinson Dr. #1207
Honolulu, HI 96814

Friday, February 27, 2009 09:30 AM

Strong support for SB 1088 -- Public Beach Access

I strongly support this bill because the rights of all shoreline users need to be defended. Whether we surf, dive or fish, our individual rights to coastal access is directly related to our quality of life. Many of us have formed lifestyles around the ocean and would lose a major public resource if we couldn't get to our preferred spots.

I respectfully ask that you support this bill on our behalf.

Aloha,
Marvin

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 11:04 AM
To: JGO Testimony
Cc: ryowave@gmail.com
Subject: Testimony for SB1088 on 2/27/2009 9:30:00 AM

Testimony for JGO 2/27/2009 9:30:00 AM SB1088

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: RYO KUBOTA
Organization: Individual
Address:
Phone:
E-mail: ryowave@gmail.com
Submitted on: 2/25/2009

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 2:05 PM
To: JGO Testimony
Cc: mjmermaid@aol.com
Subject: Testimony for SB1088 on 2/27/2009 9:30:00 AM

Testimony for JGO 2/27/2009 9:30:00 AM SB1088

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Mary Jo Morrow
Organization: Individual
Address:
Phone:
E-mail: mjmermaid@aol.com
Submitted on: 2/25/2009

Comments:

Years ago the Kuulei Tract joined together to fight to keep the Mauka residents beach access open after the access was threatened to be closed.

Some of the Kuulei Tract home owners had beach access stipulated in their leases.

By right of useage over years the state granted the Beach Access to be kept open and it is now an official Beach Access.

We on South Kaleheo in Kailua have three Beach Accesses for the Mauka and public to use.

With the sell of local properties to Mainlanders we have seen the gated communities springing up depriving the local and Mauka tract beach access. This trend needs to stop!

From: daniel hickman [kailua6@hawaiiantel.net]
Sent: Wednesday, February 25, 2009 2:38 PM
To: Sen. Brian Taniguchi; Sen. Dwight Takamine; JGO Testimony
Subject: Strong support for SB 1088 -- Public Beach Access

Brian T. Taniguchi
Dwight Y. Takamine
Committee on Judiciary and Government Operations

daniel hickman
kailua6@hawaiiantel.net
775 n. kalaheo ave.
kailua, HI 96734

Friday, February 27, 2009 09:30 AM

Strong support for SB 1088 -- Public Beach Access

I strongly support this bill because every time a new gate goes up we loose access to our public beaches in hawaii, in effect creating a private beach for homeowners on these streets. i.e. l'orange place in kailua. we had the right of way to the beach using l'orange place for over fifty years, yet last summer the homeowners erected a locked gate. only having to get an over the counter permit without addressing the publics right to beach access. namala place and kailuana loop in kailua,. which are public streets have locked gates surly this at the very least is not right.
thank you
daniel and blanch hickman..