

TESTIMONY
SB 153

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 Committees on
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS
and
TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

Monday February 2, 2009
2:45 PM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 153
RELATING TO PUBLIC ACCESS

Senate Bill (SB) 153 proposes to require state and county agencies to ensure that a public right-of-way is available prior to the approval of any development project, subdivision, or zoning change. The Department of Land and Natural Resources (Department) supports the intent of the bill to ensure protection of public access to coastal and inland recreation areas, however **the Department cannot support the bill** in its current form due to the overly restrictive requirement that state and county agencies ensure that public right-of-way is available prior to the approval of *any* development, subdivision or zoning change.

The requirement that public right-of-way is available prior to approval of any development is unreasonably restrictive as it would potentially require even simple home improvements to provide for a public right-of-way. The Department supports the requirement that adequate public access is available prior to approval of any subdivision or zoning change but inclusion of any development is unreasonable.

In addition, the Department offers the following:

- Consider amending language to clarify the bill intends to provide for maintaining public access through *existing* public right-of-ways rather than requiring the creation of new ones. The creation of new right-of-ways may require a condemnation of private land for public purpose.
- Recommend amending SB 153 to define what an acceptable level of public right-of way is. Currently it is unclear to what degree (how frequent and what type) of right-of-way access is acceptable. Also by what standards will the evaluation of acceptable right-of-way be measured?

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
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

- Recommend amending §115(1) of the bill to read: (1) A [new] dwelling unit, house, hotel, apartment, apartment hotel, motel, condominium project, condominium property regime, cooperative apartment, lodging unit, or rooming house.
- Recommend amending the bill by removing §115(2) in its' entirety. This section requires that access be available to public areas before approval for improvement projects to a "dwelling unit, house, hotel, apartment," etc... as described in the proposed bill.



SB 153, RELATING TO PUBLIC ACCESS

Senate Committees on Water, Land, Agriculture, and Hawaiian
Affairs;
and Transportation, International and Intergovernmental Affairs

February 2, 2009

2:45 p.m.

Room: 229

The Office of Hawaiian Affairs **SUPPORTS** S.B. 153, which would require state and county agencies to ensure that a public right-of-way is available prior to the approval of any development project, subdivision, or zoning change.

OHA has become increasingly concerned over what amounts to the privatization of our shoreline areas by such things as developers and private homeowners who cut off access near their properties without providing for new points of entry.

We see that this is a perennial concern for the residents of this state, as evidenced by this issue returning to the Legislature every session. It is time to address these problems and move forward.

OHA sees that this bill is an easy and necessary regulatory check that seeks to ensure existing privileges and rights are recognized. Further, it is economical, which we all know matters now.

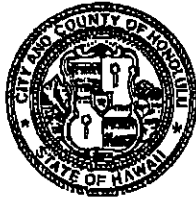
Additionally, our beneficiaries - all Native Hawaiians - have cultural, subsistence and religious rights guaranteed to them by the Hawai'i State Constitution that have been further strengthened by statutes, rules and court cases that this bill will compliment.

Therefore, OHA urges the Committees to PASS S.B. 153. Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUNI MANNEMANN
MAYOR



DAVID K. TANOUÉ
ACTING DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 2, 2009

The Honorable Clayton Hee, Chair
and Members of the Committee on Water,
Land, Agriculture, and Hawaiian Affairs

The Honorable J. Kalani English, Chair
and Members of the Committee on Transportation,
International and Intergovernmental Affairs

The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Hee, English and Members:

**Subject: Senate Bill No. 153
Relating to Public Access**

The Department of Planning and Permitting respectfully **opposes** Senate Bill No. 153 on the basis that it is overly exacting and unreasonable, and would not help the state's economy.

According to this bill, the owner of a single residential lot would be required to provide a public right-of-way access before he or she can obtain approval of a building permit to construct a new home or renovate an existing home, or even before a small subdivision into two lots can be approved. This is clearly too onerous and an unreasonable imposition on property owners.

If this bill passes in its current form, it will preclude the issuance of a large percentage of building permits for even small projects such as installation of solar panels, kitchen and bathroom renovations, room additions, etc., that are considered improvements to a dwelling unit, house, or lodging unit, and therefore, subject to the bill's provisions. This bill would have negative impacts not only for homeowners, but also for the construction and home improvement industry that would be denied desperately needed jobs at a time of severe economic downturn for the state.

The Honorable Clayton Hee, Chair
and Members of the Committee on Water,
Land, Agriculture, and Hawaiian Affairs

The Honorable J. Kalani English, Chair
and Members of the Committee on Transportation,
International and Intergovernmental Affairs

February 2, 2009

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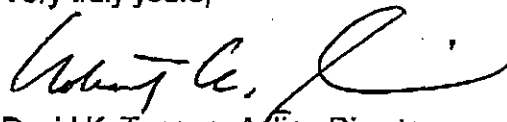
Further, Chapter 22, Article 6, ROH already makes provisions that if required by a cognizant reviewing agency, a developer may be required to dedicate land for public access or grant an easement for pedestrian travel from a public highway or public street to the shoreline or mountain for:

- a. New multiple-family developments of six (6) or more units;
- b. Addition of six (6) or more units to an existing multi-family development; or
- c. Subdivision of land into six (6) or more lots.

Accordingly, we respectfully request that Senate Bill No. 153 be amended or filed.

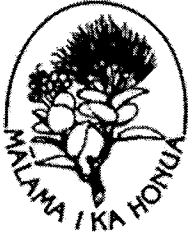
Thank you for the opportunity to testify.

Very truly yours,


for David K. Tanoue, Acting Director
Department of Planning and Permitting

DKT:jmf

sb153-mt.doc



Sierra Club

Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

February 2, 2009, 2:45 P.M.

(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 153

Chair Hee, Chair English, and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports SB 153, ensuring public access to beaches and public mauka recreational areas is protected whenever new development or activities may impinge on that access.

Intimidating gates and ominous signs deter access to public beaches and trails. We need reforms that ensure that new development does not block access.

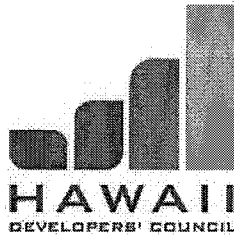
We all know Hawai'i offers some of the most stunning hiking trails and beaches in the world, attracting residents and visitors alike for their beauty and challenge. Access to Hawaii's coast and mountain areas for recreational, cultural, or subsistence uses is a core value that residents have respected for generations. While we often take for granted our ability to enjoy and hike on our public land, certain developers and gated communities restrict access to these trails. Gated communities are growing in popularity as wealthy homebuyers seek "exclusive" communities. Gated communities and obstructions shut the public out of public lands. Locking the public out of publicly owned lands threaten our essential rights as citizens.

For example, for over 15 years, the City and County of Honolulu has allowed the Hawaii Loa Owners Association to control access to the popular Hawai'i Loa Ridge Trail and to exclude altogether out-of-state residents. For years, the City and County of Honolulu has refused to open up the Hawaii Loa access. The U.S. Constitution guarantees that the citizens of one state shall not be denied the privileges and immunities of the citizens of other states.

Senate Bill 153 would strengthen our existing access tradition by ensuring access as a condition prior to the approval of a permit for a development project, subdivision, or zoning change. This would help to ensure safe access along the coastline and to public inland areas and prevent abuses of Hawaii's access laws. Projects that aren't likely to threaten public access—like building a new lanai on a house—don't trigger the new access provision.

By ensuring that public access is a condition of approval, SB 153 helps to protect Hawaii's proud public access tradition. Please move this measure forward.

Thank you for the opportunity to testify.



February 2, 2009

Senator Clayton Hee, Chair
COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
Senator J. Kalani English, Chair
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
Conference Room 229
State Capitol
415 South Beretania Street

Senators Hee and English:

Subject: Senate Bill No. 153 RELATING TO PUBLIC ACCESS

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC is opposed S.B. No. 153 as proposed.

Senate Bill No. 153 would require permit granting agencies to determine whether a public right-of-way is available before granting a permit.

This bill seems unnecessary, especially since access to the shoreline is already required pursuant to HRS Chapter 46. And if Chapter 46 is not applicable, then Chapter 115-2 provides that "various counties shall purchase land for public rights-of-way to the shorelines, the sea, and inland recreational areas, and for public transit corridors where topography is such that safe transit does not exist."

If providing public access is the intent, we believe the appropriate avenue to secure this access would be through the direct negotiation or, as a last resort, the use of eminent domain in which the owners would be compensated.

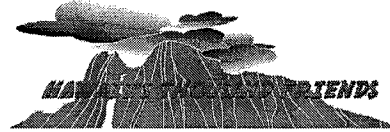
It appears that the bill is unnecessary and for these reasons, we ask that this bill be held.

Thank you for the opportunity to express our views on this matter.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org



SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

February 2, 2009, 2:45 P.M.

TESTIMONY IN SUPPORT OF SB 153

Chair Hee, Chair English, and members of the Committee:

As stated in the testimony of the Director of the Sierra Club, Robert Harris, the Hawai'i Chapter supports Senate Bill 153. I am a volunteer for the Sierra Club Hawai'i Chapter and appreciate the opportunity to share with you my reasoning for backing the forward movement of this bill.

The intent of Senate Bill 153 is to protect our rights to public access from being further degraded. Although public access to beaches, parks, hiking trails and other recreational areas is a right that we in Hawaii take pride in, it is a right that has been compromised by numerous developments that were inappropriately approved by various agencies. Senate Bill 153 would strengthen our existing rights by ensuring public access as a condition prior to the approval of a permit for a development project, subdivision, or zoning change. I'm sure you are able to think of several developments that currently impinge on you and your ohana's public access rights.

It is sometimes difficult for hard working, and often overworked, individuals to recognize all of the ramifications of their actions. I believe this bill will make the evaluation process of new developments more efficient. Please take this opportunity to prevent any future developments from disrespecting the rights of Hawaii's citizens. Please move this measure forward. Mahalo for considering my testimony.

Sincerely,

Mele Coleman

Sierra Club, Hawai'i Chapter Volunteer
melecoleman@gmail.com
(808) 285-8581



February 2, 2009

Senator Clayton Hee, Chair
COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
Senator J. Kalani English, Chair
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL
AFFAIRS
Conference Room 229
State Capitol
415 South Beretania Street

Senators Hee and English:

Subject: Senate Bill No. 153 RELATING TO PUBLIC ACCESS

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii is opposed S.B. No. 153 as proposed.

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TESTIMONY

SB 153

(END)