

**HB1808**

**HD3 SD1**

**LATE**

**LATE**

Jeannine Johnson, Legislative Sub-Committee Chair

**Kuli'ou'ou / Kalani Iki Neighborhood Board #2**

5648 Pia Street, Honolulu, Hawai'i 96821

Phone: 373-2874 (h) / 537-7261 (w)

March 22, 2010

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Senator Brian T. Taniguchi, Chair

Senator Dwight Y. Takamine, Vice Chair

HB 1808, HD3, SD1 RELATING TO COASTAL AREAS

Hearing: Tuesday, March 23, 2010 at 9:30 am in Conference Room 016

Aloha Chair Taniguchi and Vice Chair Takamine,

As Committee Chair of the **Kuli'ou'ou / Kalani Iki Neighborhood Board #2** Legislative Sub-Committee, I must inform you **Neighborhood Board #2** strongly supports HB1808, HD3 which requires maintenance of public beach accesses by adjacent landowners and imposes penalties for noncompliance; establishes shoreline access as a policy of the Coastal Zone Management Program; and clarifies the definition of "shoreline." **Neighborhood Board #2** represents over 6,000 households, with a population of almost 20,000 people (State of Hawai'i Data Book 2002) in East Honolulu. **Neighborhood Board #2 does not support SD1 which removed the important requirements of HB1808.**

The purpose of Hawai'i Revised Statutes (HRS) Chapter 115 is to guarantee the right of public access to the sea, shorelines, and inland recreational areas, and transit along the shorelines, and to provide for the acquisition of land for the purchase and maintenance of public rights-of-way and public transit corridors. In 1968 the Hawai'i State Supreme Court established that the land below the high water mark is a natural resource that belongs to the State of Hawai'i and held in trust for the benefit of its people and whose ownership may not be relinquished. Hawai'i's coastal protection law, HRS Chapter 205A, requires the State to provide and manage adequate public access to and along shorelines with recreational value and establishes that seaward of the shoreline is part of the conservation district and regulating uses of the conservation district is the responsibility of the Department of Land and Natural Resources (DLNR).

For years beachfront homeowners have intimidated the public with walls, gates, keep out signs, video cameras, and dogs. There is also evidence in many areas of induced vegetative overgrowth in the beach area by beachfront property owners by artificially cultivating aggressively growing, salt water tolerant vegetation, such as naupaka and hau, reducing beach width and squeezing or eliminating corridors of access. This deprives residents of the precious natural resource of its beaches and has the effect of turning many Hawai'i beaches into private, exclusive ones. Thus, without enforcement, the public's rights of access to and use of coastal and inland recreational areas mandated by the Hawai'i Supreme Court and the Hawai'i Revised Statutes are meaningless.

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

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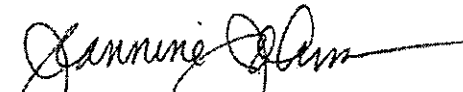
Therefore, at its November 6, 2008 meeting, **Neighborhood Board #2** voted in favor of the following:

- Appropriating funds for the Office of Planning, Coastal Zone Management Program, to survey and map all existing public access ways to shoreline areas and nearby public parking areas;
- Before permits are issued that may affect public access to the sea, the shoreline, or any coastal or inland public recreational area, the relevant agency shall ensure that a public right-of-way is available to access any and all public recreational areas, including beaches, shores, parks, and trails; and
- Requiring state and county agencies to enforce the public's rights of access to and use of coastal and inland recreational areas as mandated in HRS Chapter 115 and increase penalties for the offense of obstructing access to public property.

In addition, at its February 4, 2010, meeting, **Neighborhood Board #2** concluded that public beach corridors are similar to public sidewalks in the sense that they are for public use and should be maintain with provisions similar to those pertaining to the maintenance of sidewalks to guarantee public transit along the shoreline. Consequently, **Neighborhood Board #2** unanimously voted in favor of legislation consistent with Hawaii's coastal protection laws that would provide the mechanism for the DLNR to restore access to and along the shoreline where induced vegetative overgrowth is inhibiting access and use of the beach. (See signed Resolution attached.)

Neighborhood Board #2 respectfully requests that HB1808, be restored to **HD3**.

Mahalo,



Legislative Sub-Committee Chair

**Kuli'ou'ou / Kalani Iki Neighborhood Board #2**

cc via email: Chair Robert Chuck  
Sen. Sam Slom  
Rep. Lyla Berg  
Rep. Barbara Marumoto  
Livable Hawai'i Kai Hui  
Lucinda Pyles



**KULI'OU'OU/KALANI IKI NEIGHBORHOOD BOARD NO. 2**

c/o NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET ROOM 400 • HONOLULU, HAWAII, 96813  
PHONE (808) 768-3710 • FAX (808) 768-3711 • INTERNET <http://www.honolulu.gov/nco>

**RESOLUTION IN SUPPORT OF LEGISLATION THAT  
ADDRESSES THE REMOVAL OF ARTIFICIALLY INDUCED  
VEGETATION SEAWARD OF THE SHORELINE**

WHEREAS, the Hawaii State Supreme Court has established that the shoreline lies along the upper annual reaches of the waves, excluding storm and tidal waves and is usually evidenced by the edge of vegetation or by the upper limit of debris left by the wash of the waves (Hawaii Revised Statutes §205A-1); and

WHEREAS, the Hawaii State Supreme Court has established that the land below the high water mark is a natural resource that belongs to the State of Hawaii and held in trust for the benefit of its people and whose ownership may not be relinquished; and

WHEREAS, Hawaii coastal access law, HRS §115, guarantees the right of transit along the shoreline exists seaward of the shoreline as defined in HRS §205A-1; and

WHEREAS, Hawaii coastal protection law, HRS §205A, requires the State to provide and manage adequate public access to and along shorelines with recreational value and establishes that seaward of the shoreline is part of the conservation district and regulating uses of the conservation district is the responsibility of the department of land and natural resources; and

WHEREAS, state agencies have determined that there are many shoreline areas throughout the state where the overgrowth of vegetation inhibits access to and transit along the beach, thereby denying the public of use and enjoyment of the public domain; and

WHEREAS, there is evidence in many areas of induced vegetative overgrowth in the beach area by private property owners artificially cultivating aggressively growing, salt water tolerant vegetation, such as naupaka and hau, which is able to withstand regular inundation; and

WHEREAS, such vegetation grows ever seaward in a trenchant and unrelenting manner, carpeting the shoreline with unnaturally occurring vegetation, reducing beach width and squeezing or elimination corridors of access which deprive the residents of the precious natural resource of its beaches; and

WHEREAS, artificially cultivated vegetation that is unnaturally watered and nourished develops deep penetrating root balls which prevents sand from moving onto the beach during period of high waves and has the potential of narrowing beaches due to sand loss; and

WHEREAS, in December 2007, the State Department of Business, Economic Development and Tourism (DBEDT)'s Office of Coastal Zone Management provided a written report indicating the Kahala Beach inspection revealed extensive vegetative overgrowth of hau, naupaka and other plant species that are growing on the beach corridor blocking lateral access at even moderate tides and that this problem is found through out the islands on other beaches; and



WHEREAS, in 2008, House Concurrent Resolution H.C.R. 258 was passed requesting the DBEDT Office of State Planning, along with community leaders and district legislators, to coordinate the City and State Agencies in addressing the encroaching vegetation on beaches and adopt a strategy and plan to rectify it and to report its finding to the State Legislature; and

WHEREAS, there is agreement among community leaders, elected representatives and City and State agencies that there is indeed a state wide problem; and

WHEREAS, there is agreement that State law provides within its policies and objectives for the protection of natural beach processes and the preservation of access and recreational use of the *shoreline*; and

WHEREAS, public beach corridors are similar to public sidewalks in the sense that they are for public use, therefore, to maintain public transit along the shoreline, provisions similar to those pertaining to the maintenance of sidewalks are needed; now, therefore

BE IT RESOLVED, that the Kuli'ou'ou/Kalani Iki Neighborhood Board No. 2 of the City & County of Honolulu fully supports the efforts of State Representative Mina Morita to introduce legislation consistent with Hawaii's coastal protection laws that will provide the mechanism for the department of land and natural resources to restore access to and along the shoreline where induced vegetative overgrowth is inhibiting access and use of the beach.

BE IT FURTHER RESOLVED, that the Kuli'ou'ou/Kalani Iki Neighborhood Board No. 2 of the City & County of Honolulu urges House and Senate committee chairs to hear the bill addressing this problem and subsequently pass the bill out of their committee in a speedy manner so as not to delay it's progress.

BE IT FURTHER RESOLVED, that a copy of this Resolution be transmitted to Governor Linda Lingle, Honolulu Mayor Mufi Hannemann, State Representative Mina Morita, State Representative Calvin K.Y. Say (House Speaker), State House Committee Chairs: Representative Ken Ito (Water, Land & Ocean Resources), Representative Jon Riki Karamatsu (Judiciary), Representative Marcus R. Oshiro (Finance), and all members of the State House of Representatives and State Senate, the Director of the Department of Land and Natural Resources and the Director of the Department of Business, Economic Development and Tourism.

This resolution was adopted by unanimous consent by the Kuli'ou'ou/Kalani Iki Neighborhood Board No. 2 of the City & County of Honolulu at its February 4, 2010 regular meeting.

Submitted by:

 K. Russell Ho Fore

Robert T. Chuck  
Chair

**LATE**



**WAIALAE-KAHALA NEIGHBORHOOD BOARD NO. 3**

c/o NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET ROOM 406 • HONOLULU, HAWAII 96813  
PHONE (808) 768-3710 • FAX (808) 768-3711 • INTERNET: <http://www.honolulu.gov>

**RESOLUTION IN SUPPORT OF LEGISLATION (HB 1808) THAT  
ADDRESSES THE REMOVAL OF ARTIFICIALLY INDUCED  
VEGETATION SEAWARD OF THE SHORELINE:**

BE IT RESOLVED BY THE Waialae-Kahala Neighborhood Board No. 3 OF THE CITY AND COUNTY OF HONOLULU:

WHEREAS, the Hawaii State Supreme Court has established that the shoreline lies along the upper annual reaches of the waves, excluding storm and tidal waves and is usually evidenced by the edge of vegetation or by the upper limit of debris left by the wash of the waves (Hawaii Revised Statutes §205A-1); and

WHEREAS, the Hawaii State Supreme Court has established that the land below the high water mark is a natural resource that belongs to the State of Hawaii and held in trust for the benefit of its people and whose ownership may not be relinquished; and

WHEREAS, Hawaii coastal access law, HRS §115, guarantees the right of transit along the shoreline exists seaward of the shoreline as defined in HRS §205A-1; and

WHEREAS, Hawaii coastal protection law, HRS §205A, requires the State to provide and manage adequate public access to and along shorelines with recreational value and establishes that seaward of the shoreline is part of the conservation district and regulating uses of the conservation district is the responsibility of the department of land and natural resources; and

WHEREAS, state agencies have determined that there are many shoreline areas throughout the state where the overgrowth of vegetation inhibits access to and transit along the beach, thereby denying the public of use and enjoyment of the public domain; and

WHEREAS, there is evidence in many areas of induced vegetative overgrowth in the beach area by private property owners artificially cultivating aggressively growing, salt water tolerant vegetation, such as naupaka and hau, which is able to withstand regular inundation; and

WHEREAS, such vegetation grows ever seaward in a trenchant and unrelenting manner, carpeting the shoreline with unnaturally occurring vegetation, reducing beach width and squeezing or elimination corridors of access which deprive the residents of the precious natural resource of its beaches; and

WHEREAS, artificially cultivated vegetation that is unnaturally watered and nourished develops deep penetrating root balls which prevents sand from moving onto the beach during period of high waves and has the potential of narrowing beaches due to sand loss; and

WHEREAS, on November 27, 2007, a site inspection of Kahala Beach was held with community members, elected representatives and State and City officials having functional responsibilities relative to the vegetation encroachment issue; and

WHEREAS, in December 2007, DBEDT's Office of Coastal Zone Management provided a written report



indicating the Kahala Beach inspection revealed extensive vegetative overgrowth of hau, naupaka and other plant species that are growing on the beach corridor blocking lateral access at even moderate tides and that this problem is found through out the islands on other beaches; and

WHEREAS, in 2008, House Concurrent Resolution H.C.R. 258 was passed requesting the DBEDT Office of State Planning, along with community leaders and district legislators, to coordinate the City and State Agencies in addressing the encroaching vegetation on Kahala Beach and adopt a strategy and plan to rectify it and to report its finding to the State Legislature; and

WHEREAS, in 2008 the Department of Land and Natural Resources Office of Conservation and Coastal Lands identified 12 properties with significant vegetation encroachment along Kahala's shoreline and issued letters to property owners on May 7, 2008 requesting voluntary removal of vegetation that encroached onto the beach seaward of the shoreline, with only one affirmative response; and

WHEREAS, there is agreement among community leaders, elected representatives and City and State agencies that there is indeed a state wide problem; and

WHEREAS, there is agreement that State law provides within its policies and objectives for the protection of natural beach processes and the preservation of access and recreational use of the *shoreline*; and

WHEREAS, public beach corridors are similar to public sidewalks in the sense that they are for public use, therefore, to maintain public transit along the shoreline, provisions similar to those pertaining to the maintenance of sidewalks are needed; now, therefore

BE IT RESOLVED BY THE Waiālae-Kahala Neighborhood Board 3 OF THE CITY AND COUNTY OF HONOLULU, that the Board fully supports the efforts of State Representative Mina Morita to introduce legislation consistent with Hawaii's coastal protection laws that will provide the mechanism for the department of land and natural resources to restore access to and along the shoreline where induced vegetative overgrowth is inhibiting access and use of the beach.

BE IT FURTHER RESOLVED, the Board urges House and Senate committee chairs to hear the bill addressing this problem and subsequently pass the bill out of their committee in a speedy manner so as not to delay it's progress.

BE IT FURTHER RESOLVED, that a copy of this Resolution be transmitted to Governor Linda Lingle, Honolulu Mayor Muffi Hannemann, State Representative Mina Morita, State Representative Calvin K.Y. Say (House Speaker), State House Committee Chairs: Representative Ken Ito (Water, Land & Ocean Resources), Representative Jon Riki Karamatsu (Judiciary), Representative Marcus R. Oshiro (Finance), and all members of the State House of Representatives and State Senate, the Director of the Department of Land and Natural Resources and the Director of the Department of Business, Economic Development and Tourism.

\_\_\_\_\_  
Scotty Anderson  
Chair, NHB 3

*Reona Kapi for*

Date

*Jan. 21 2010*

**LATE**



LAND USE RESEARCH  
FOUNDATION OF HAWAII  
700 Bishop Street, Ste. 1928  
Honolulu, Hawaii 96813  
Phone 521-4717  
Fax 536-0132



Via: <http://www.capitol.hawaii.gov/emailtestimony>

**March 23, 2010**

**Support and Comments to HB 1808, HD3, SD1: Relating to Coastal Areas  
(Clarifying Definition of Shoreline)**

**Senate Committee on Judiciary and Government Operations,  
Hearing Date: Tuesday, March 23 at 9:30 a.m. in CR 016**

Honorable Chair Brian Taniguchi, Vice Chair Dwight Takamine and Members of the Senate Committee on Judiciary and Government Operations,

I am Dave Arakawa, the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide testimony and comments regarding HB 1808, HD3, SD1, which attempts to clarify the definition of shoreline as defined in §205A-1 of the Hawaii Revised Statutes (HRS).

**HB 1808, HD3, SD1.** This bill amends the definition of shoreline in HRS §205A-1 as underscored:

Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of natural vegetation growth, or the upper limit of debris left by the wash of the waves[-], whichever is further most mauka, but never lower than the upper limit of debris left by the wash of the waves.

On March 12, 2010, the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs amended this bill by:

- (1) Removing the provisions to:
  - (A) Require maintenance of public beach accesses by adjacent landowners and impose penalties for noncompliance; and
  - (B) Establish shoreline access as a policy of the Coastal Zone Management Program;
- (2) Clarifying the definition of "shoreline"; and



(3) Changing the effective date to July 1, 2050 for the purposes of facilitating further discussion.

**LURF's Position.** LURF generally supports the intent and purpose of HB 1808, HD3, SD1 and prefers the current SD1 version over the prior HD3 version, however we must respectfully **request that this Committee defer this bill and not include the following language: [·], whichever is further most mauka, but never lower than the upper limit of debris left by the wash of the waves, because this may be in conflict with case law already governing this issue.**

In 2006, in Diamond v. State of Hawaii, 112 Haw, 161, 145 P.3d 704 (2006), the Hawaii Supreme Court noted the legislative intent and history of HRS §205A-1 which,

support[ed] the interpretation that the shoreline should be certified at the highest reach of the highest wash of the waves. In 1986, the legislature amended the definition of shoreline, adding the following emphasized language that is currently in the statute: "the upper reaches of the wash of the waves, other than storm or tidal waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves." 1986 Haw. Sess. L. Act 258, § 2 at 469 (added language emphasized)."

Diamond further held that

Upper reach of the wash of the waves, as used to define "shoreline," is not per se established by a stable vegetation line; statute provided that upper wash was "usually" evidenced by vegetation, and also stated that it was usually evidenced by the upper limit of debris left by the wash of the waves, and legislative history of the statute removed phrase which gave preference to vegetation line over debris. HRS § 205A-1.

The language of HB 1808, HD2, SD1 may put the definition of shoreline in question and result in increased litigation. Although the bill's intent may aim to further clarify vegetation line vs. debris line, it may result in just the opposite because of confusion and ambiguity as to its meaning. The Hawaii Supreme Court warned against multiple meanings when it said, "[w]hen there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists."

The shoreline access and maintenance are important issues that affect the State's coastal lands and the public's right to enjoy the shoreline. Likewise, landowners who live along the shoreline have important property rights.

Understanding the importance of the shoreline issues raised by HB 1808, HD3, SD1, LURF would respectfully request that the bill be **deferred** to allow stakeholders, including, but not limited to government agencies, the public, private landowners, legal experts and other interested parties to meet and work together to come to a consensus regarding the provisions of HB 1808, HD3, SD1.

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

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 23, 2010 3:35 AM  
**To:** JGO Testimony  
**Cc:** br\_pyles@yahoo.com  
**Subject:** Testimony for HB1808 on 3/23/2010 9:30:00 AM

**LATE**

Testimony for JGO 3/23/2010 9:30:00 AM HB1808

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Brian Pyles  
Organization: Individual  
Address:  
Phone:  
E-mail: [br\\_pyles@yahoo.com](mailto:br_pyles@yahoo.com)  
Submitted on: 3/23/2010

Comments:

Please restore this bill to version HD3. In its amended state, this bill now fails to require property owners to maintain property, manage the growth of vegetation to inhibit shoreline access, and strips the DLNR of any power to do anything about induced vegetation obstructing lateral access and recreational use of the beach. Additionally, failure to institute the necessary changes allows land owners to continue to interfere with the natural beach processes, enabling erosion of the shorelines and the public's ability to enjoy Hawaii's most important natural resource.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 23, 2010 3:44 AM  
**To:** JGO Testimony  
**Cc:** yabas14@hotmail.com  
**Subject:** Testimony for HB1808 on 3/23/2010 9:30:00 AM

**LATE**

Testimony for JGO 3/23/2010 9:30:00 AM HB1808

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Robert Chun  
Organization: Individual  
Address:  
Phone:  
E-mail: [yabas14@hotmail.com](mailto:yabas14@hotmail.com)  
Submitted on: 3/23/2010

Comments:

This bill needs to be revised back to version HD3! As locals we need to embrace what this bill stands for. The opportunity to restore beach access and safety to the public. Stop the erosion that irresponsible land owners are causing, to one of Hawaii's most important natural resources, the beach. Vegetation has begun encroaching beach access from Diamond Head to Waimanalo over the past years, and politicians now propose to do nothing about it. We need to take a stand, unite, and embrace the Hawaiian mantra, Malama Ka `Aina, Respect The Land!

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 23, 2010 3:56 AM  
**To:** JGO Testimony  
**Cc:** race4fun67@gmail.com  
**Subject:** Testimony for HB1808 on 3/23/2010 9:30:00 AM

**LATE**

Testimony for JGO 3/23/2010 9:30:00 AM HB1808

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Steve Carter  
Organization: Individual  
Address:  
Phone:  
E-mail: [race4fun67@gmail.com](mailto:race4fun67@gmail.com)  
Submitted on: 3/23/2010

Comments:

How can the politicians change this bill from version HD3 to one in which strips the very essence and purpose? Are Hawaii's beaches not what bring tourist and revenue to the islands? Is the beach and ocean access not the foundation from which the Hawaiian culture was built? Please restore this bill to HD3, and consider the importance of what this means not just for today but for future generations as well. If there is any question about whether this is the right choice, please reference the pictures that were submitted with the bill, or simply go for a walk along the shoreline. In some cases keavi trees are allowed to grow out of control, with cuttings littering the beach, and large thorns protruding just beneath the sand. The impact is substantial and obvious. This is an issue, please make the right choice and support version HD3.