

<b>To: Rep. Jerry Chang</b>	<b>From: Bill Walter, W. H. Shipman, Limited</b>
<b>Fax No: 808-586-6121</b>	<b>No. of Pages: 2</b>
<b>Date: March 8, 2011</b>	<b>Importance: HIGH</b>
<b>Subject: SB 1481 – PUBLIC ACCESS WITH PRIVATE RIGHT OF ACTION</b>	

The above bill

amends the offense of obstructing access to public property to include the installment of certain visual impediments. Creates a private right of action for a person to enforce the prohibition of obstruction.

There are several serious issues created by the legislation as written. They include:

- Apparently creates a new right to claim access rights based on their (up to this point illegal) use of our property. “Customary use” or “open and continuous public use” can be interpreted to mean that illegal trespassing – even under efforts to stop the same – will create a transfer of property rights to the person who is illegally and irresponsibly trespassing. This transfer would occur without due process and without even minimal condemnation and condemnation compensation proceedings. There are no EA’s, no EIS’s and no real opportunity for the land owner to object.
- Poorly and broadly defining what constitutes legal access and obstruction of access to public property. The legislation leaves to courts the task of defining what such legal access is while apparently broadening the definition of legal access well beyond today’s standard. It could take years of costly litigation to define what is and what is not legal. Similarly, what obstruction to such access is so broadly defined as to create another need for courts to provide precise definition.
- Giving (and even encouraging) the public the apparently unlimited right to sue for access – leaving all land owners with the responsibility to prove that there is no legal access. As each “offended” (rightly or wrongly offended) individual has the right to sue, a land owner could very easily find himself/herself defending the same or similar access points continually at great personal cost.

W. H. Shipman, Limited owns more than 16,000 acres on the island of Hawaii. Title to our land was registered in Land Court in 1933 following long deliberation over trails, access and government roads. Those portions of the land that were subject to public access had (and have) clearly defined access in Land Court records. In the mid 1990’s a case concerning access and trespassing reached the State Supreme Court which declined to override a lower court ruling in the Company’s favor, underscoring the rights determined in the Land Court registration process.



At the same time the Company has and continues to work with DLNR to maintain and keep open a portion of the Old Puna Trail to sites that are open to the public. We are now working through an agreement wherein Shipman will build a parking lot on its property and even provide a form of restroom facilities for public use along the trail. We do not discourage legal public access through our properties en route to public properties; to the contrary we encourage appropriate use of these access points.

This legislation as written would encourage the public – and our property sits surrounded by 41,000 residents of Puna and 43,000 of Hilo – to individually and continuously sue us for any number of access points even though legal access has long since been determined in court. We can anticipate suits by:

- Hunters who come through our property on pig trails to illegally hunt. This practice is highly disruptive to the more than 100 farmers who lease from us and who experience production disruptions, vandalism and theft. It is not safe for the hunters, none of whom have received permission and come in different groups with a variety of firearms and other weapons.
- ATV owners looking for places to roam who ride roughshod over historical and cultural sites and who threaten the safety of pedestrians using the Na Ala Hele trail system. Operation of the vehicles also threatens the ranching and other farming operations on our property.
- Those who may simply wish to access public properties through a route of their own choosing. They may determine that after enough suits the landowner will tire of defending their rights. Or alternatively they may all conclude that by simply using the land for access – they gain control of it as a matter of “customary rights.”

Allowing continual suits over established rights and in effect encouraging illegal (and often dangerous) trespassing does not seem to us to be the way that a society built on a foundation of legal principals should operate. This legislation will cause landowners like Shipman to have to establish legal departments to simply retain rights already established. The cost of defending what has been previously established is likely to be overwhelming. In the long run the probable result will be a combination of hurried development and sales to outside individuals and groups who have little connection to our culture. We think this would be counterproductive to the desire we all have to enhance and take proper care of the aina and the culture that we all love.

Bill Walter  
President.