

Aloha:

Act 130, 2010 has proven to be a valuable tool to protect the public's right to beach access. In the past, Kailua has had a number of instances where homeowners have decreased the size of the beach by introducing plantings in the sand. We have also found, in some cases, that the plantings cause beach erosion similar to seawalls. So it is important that HB17 be adopted to make Act 130 permanent.

Mahalo, Charles Prentiss

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 24, 2013 3:21 PM
To: waltestimony
Cc: prentissc001@hawaii.rr.com
Subject: Submitted testimony for HB17 on Jan 25, 2013 08:30AM

HB17

Submitted on: 1/24/2013

Testimony for WAL on Jan 25, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Prentiss, Ph.D.	Kailua Neighborhood Board	Support	No

Comments: Correction to previous testimony... Act 130 should read Act 160.

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COMMITTEE ON WATER & LAND

Rep. Cindy Evans, Chair

Rep. Nicole E. Lowen, Vice Chair

DATE: Friday, January 25, 2013

TIME: 8:30 am

PLACE: Conference Room 325

HB 17 RELATING TO COASTAL AREAS.

Makes permanent Act 160, SLH 2010.

Aloha Chair Evans, Vice Chair Lowen and members of the Committee

Life of the Land is Hawai`i's own community action group advocating for the people and the land since 1970. Our mission is to preserve and protect the life of the land by promoting sustainable land use, promote open government through research, education, advocacy, and when necessary, litigation.

Act 150-2010 (HB 1808 HD3 SD1 CD1) dealt with protecting coastal public resource assets. In particular, some landowners intentionally promote the growth of shoreline vegetation and/or promote vegetation along makai-to-mauka beach transit corridors in an attempt to increase the area of their property while decreasing coastal public trust assets.

Act 160-2010 required that the Department of Land and Natural Resources (DLNR) protect these public trust resources. The Act established penalties for landowners who violated the law.

Act 160 concluded with: "This Act shall take effect upon its approval; provided that on June 30, 2013, this Act shall be repealed"

HB17 makes permanent the provisions of Act 160-2010.

The 2001 testimony to DLNR by Kat Brady, Assistant Executive Director is still relevant to this issue:

One of the things that makes Hawai`i such a unique and wonderful place is that the beach belongs to everyone. [] Allowing private property owners to quietly acquire state land is a very dangerous precedent to set.

Life of the Land strongly supports the values of aloha `aina and malama `aina and at first blush one could infer that property owners are taking care of the beach to prevent erosion. But [] some property owners are actually vegetating the beach and, as one resident put it 'vigorously watering' in front of their properties in order to make a claim on it. This should never be allowed in Hawai`i, where our way of life is deeply connected to the beach.

Consider why a beachfront property owner with an already large front yard would ask the state to enlarge his property. Would the granting of this application encourage more building on his property? Building in the Special Management Area has already proven to be a problem, and with the climactic changes taking place, Hawai`i's ocean levels are predicted to rise. This will only create more problems for the state without having to deal with claims from property owners whose land is threatened.

It is the responsibility of the state to protect the public trust. Article XII Section 4 of the Hawai`i State Constitution reads....

PUBLIC TRUST

Section 4. *The lands granted to the State of Hawai`i by Section 5(b) of the Admission Act [] shall be held by the State as a public trust for native Hawaiians and the general public.*

Public resources should not be used to enhance private landowners assets. Article XI Section 1 of the Hawai`i State Constitution reads....

CONSERVATION AND DEVELOPMENT OF RESOURCES

Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

Public beaches are just that. PUBLIC. They belong to all the people of Hawai`i. Any accreted lands should be declared state land and held in trust for the public. Please uphold this wonderful principle that makes Hawai`i so special. Getting to the beach should not be an economic issue. The beaches are for all of us lucky enough to live in this sacred land.

Illegal land grabs claimed by Eloise Aguiar (Honolulu Advertiser, December 9, 2001)

Morning glories, beach grass and naupaka line the shore of Kailua Beach, adding touches of green to the buff and-blue landscape. But aggressive watering of these patches by some homeowners is causing plants to spread and reduce the amount of beach in public use.

The landscape has spread so much in one location that residents of the adjoining lot filed for an application of accretion, essentially seeking to add the land under the greenery to their property.

The state surveyor did not recommend the application to the land court, which makes the final decision, but the application and aggressive watering has residents and public officials concerned about losing public use of the beaches.

"The public is being robbed," said Karen Simmons, who became aware of the accretion application when surveyors appeared at the beach near her home

to survey her neighbor's property.

Simmons complained to the state Department of Land and Natural Resources in September 2000 about people extending their beachfront property by putting morning glory vines in the sand and watering them. In two areas, naupaka shoots have been planted, and one neighbor added as much as 2,000 square feet of vegetation, she said.

It all adds up to illegal taking of public beach, which carries a maximum fine of \$2,000, said Sam Lemmo, DLNR coastal lands program manager. People can apply for a permit to plant in the state conservation shoreline, which is generally the highest wash of the wave, but Lemmo said most plantings are not in the public interest.

The public has "a right to access and use these areas, and we have to protect those rights to the best of our ability, so we try to discourage that type of practice," he said.

Please pass this bill.

Mahalo

Henry Curtis
Executive Director



Sierra Club Hawai'i Chapter

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HOUSE COMMITTEE ON WATER & LAND

January 25, 2013, 8:30 A.M.
(*Testimony is 1 page long*)

TESTIMONY IN SUPPORT OF HB 17

Aloha Chair Evans and Members of the Committee:

The Sierra Club of Hawai'i **supports** HB 17, which requires ongoing maintenance by adjoining properties in order to ensure continued access to our public beaches.

Overgrown plants, sometimes intentionally allowed to overgrow the shoreline and beach access, deter the reasonable use of our public beaches and trails. In order to maintain the safety of our residents and our guests, we need to ensure access and use of our beaches is maintained.

By ensuring the public continues to have access and use of our beaches, HB 1808 helps protect Hawaii's proud public access tradition.

Please move this measure forward.

Thank you for the opportunity to testify.



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January 25, 2013

Committee on Water & Land
Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair

HB 17 RELATING TO COASTAL AREAS

Committee Chair and members:

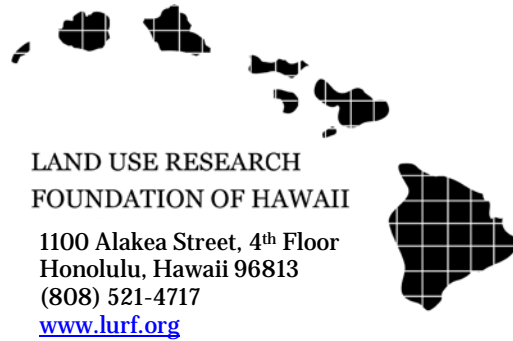
Hawaii's Thousand Friends a statewide non-profit land and water advocacy organization supports HB 17 that requires maintenance of public beach accesses by adjacent landowners and establishes shoreline access as an objective of the coastal zone management program.

The passage of Act 160 in the 2010 legislative session brought consistency in Hawaii's shoreline public access laws, court decisions and clearly defined the right of public transit on Hawaii's public beaches.

Public access to and transit along Hawaii's beaches is not some demonstration project but well established in state law, Hawaii's Coastal Zone Management Act and Hawai'i Supreme Court rulings {1995 PASH case and reaffirmed in the 2006 Diamond/Bronstein vs. BLNR. So it is puzzling why Act 160 was set to be repealed this year.

Hawaii's beaches and ocean must remain freely accessible, as they are our playgrounds, provide food and opportunities for constitutionally protected cultural and traditional practices.

For these reasons we urge you to pass HB 17.



January 23, 2013

Representative Cindy Evans, Chair
Representative Nicole Lowen, Vice Chair
House Committee on Water and Land

Comments and Concerns Relating to HB 17, Relating to Coastal Areas. (Makes permanent Act 160, Session Laws of Hawaii 2010.)

Friday, January 25, 2013, 8:30 a.m., in House Conference Room 325

The Land Use Research Foundation of Hawaii (LURF) is 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 comments and concerns relating to this bill.

HB 17. This bill proposes to make permanent Act 160, Session Laws of Hawaii 2010 (the "Act"), which requires maintenance of public beach accesses by adjacent landowners relating to ensuring that beach transit corridors abutting their lands ("shoreline access") are kept passable and free from landowners' human-induced, enhanced, or unmaintained vegetation; imposes penalties for noncompliance; establishes shoreline access as an objective of the coastal zone management program; and requires the Department of Land and Natural Resources ("DLNR") to provide written notice to property owners affected by the Act.

LURF's Position. Consistent with LURF's prior objections and concerns relating to the underlying Act, we maintain the belief that landowners who live along the shoreline have important property rights, as well as the legal right to not be prosecuted by the State or to be charged fees for non-performance of maintenance obligations which should properly be performed by the State. **LURF respectfully requests that this bill be held** to allow for the Legislature's review of a comprehensive report regarding what has happened since 2010 to justify the proposal to make the Act permanent; and time to allow the 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 bill's provisions and consequences.

While LURF generally supports the intent and purpose of HB 17, LURF has the following comments on, including serious concerns and objections relating to the proposed measure:

- **Portions of the may violate existing State agreements requiring the State to maintain shoreline access on private shoreline lands.** The State has existing agreements with shoreline land owners which require the State to maintain shoreline access ways, including agreements with hotel properties along Waikiki Beach and some shoreline trails on private property which are part of the State's Na Ala Hele Trail and Access System.
- **There is no status report to justify making the Act permanent; and no report which provides critical information relating to what has occurred since the Act was enacted, two years ago.** The major questions relating to Bill 17 are: What has happened over the past two years, that would justify making the Act permanent? Is the Act still necessary? The Legislature, public and affected land owners have not been provided with any report or information relating to how the has been implemented and enforced over the past two years. Prior to making the Act permanent, the Legislature should be provided with the relevant information to determine whether the Act is justified and still necessary. Such critical information should include, but not be limited to the following matters:
 - Have there been any problems, lawsuits, wrongful notice of violations or wrongful prosecutions relating to the enforcement of the Act?
 - Are landowners currently maintaining these shoreline areas and beach accesses?
 - Has DLNR been forced to maintain any public beach access due to the non-compliance by the adjacent landowner? If so, what were the maintenance costs? Were such costs recovered from the adjacent landowner?
 - Has the Act affected private property rights and/or real estate sales of shoreline properties?
 - Have there been any criminal prosecutions under §115-9, Hawaii Revised Statutes ("HRS") for obstructing access to public property? If so, how many times, what were the circumstances and what were the amounts of the fines? (Act 160, SLH 2010, §115-___ (b))
 - Have any HRS 183C-7 notices of violation been issued to landowners? If so, how many times, and what were the circumstances? (Act 160, SLH 2010, §115-___ (b))
 - Have any landowner failed to remove the landowner's human-induced, enhanced, or unmaintained vegetation within twenty-one days of notice being issued? (Act 160, SLH 2010, §115-___ (b))
 - Has the DLNR taken any action authorized under HRS §183C-7, necessary to maintain access within beach transit corridors? (Act 160, SLH 2010, §115-___ (b))
 - Have any landowners contested the basis upon which the notice was issued prior to the expiration of the notice period? (Act 160, SLH 2010, §115-___ (b))
 - Have any DLNR enforcement actions under HRS §183C-7 been tolled until the final resolution of the contested matter? (Act 160, SLH 2010, §115-___ (b))

- **No transparency, no public notice, no opportunities for public education and input, no public meetings with shoreline landowners who will be impacted.** The Act provides for criminal prosecution, the possibility of unlimited criminal fines, and substantial civil fines of up to \$15,000 a day, per violation. Despite the serious impacts, we understand that over the past two years, the State has not implemented a public education campaign to inform, discuss or work with the various large private shoreline land owners, and other affected land owners. The Act should not be made permanent until the State has provided such opportunities. Perhaps after such education and input, Bill 17 may be unnecessary.
- **Danger of interpretations, enforcement or amendments which expand the scope of the Act.** LURF supports the originally alleged purpose and intent of the legislation triggering the Act, which was to prohibit interference with, or blocking of public lateral access along the shoreline by means of a “landowner’s human-induced, enhanced, or unmaintained vegetation.” However, we would object to possible expansive interpretations, enforcement and amendments of the Act which may go too far in attempting to effectuate the claimed purpose and intent of the measure, and raise the following serious concerns:
 - Sets a huge precedent, if interpreted, enforced, or amended to require private citizens to assume all of the responsibilities DLNR to maintain State lands and the State vegetation, due to the fact DLNR does not have the funds to do so. The casting off of all State maintenance responsibilities onto private landowners will result in landowner liability issues which will require State funding for the legal defense, indemnification, and payment of damages for personal injury claims and lawsuits relating to the private landowners’ assumption and performance of DLNR’s maintenance responsibilities on State lands.
 - Improper interpretations, enforcement, or expansive amendments could invite unwarranted criminal misdemeanor prosecutions of, and district court lawsuit actions against private shoreline landowners who do not perform what are rightfully DLNR’s shoreline maintenance responsibilities. Said prosecutions and actions could undoubtedly trigger and result in serious due process violations and lawsuits by landowners against the State.
 - Violates and reneges on prior, long-existing agreements between the State and landowners regarding maintenance of shoreline access areas.
 - Violates and reneges on State agreements as early as 1965 with Waikiki hotel landowners.
 - The additional maintenance costs of performing DLNR maintenance functions may cause large landowners to sell off or develop their properties along the shoreline to spread the maintenance costs.
 - Being required to perform of DLNR’s shoreline maintenance responsibilities would result in substantial additional costs for individual lot owners. Such an obligation would be required to be disclosed to potential purchasers of shoreline properties, as said purchasers could be subject to criminal prosecution and district court lawsuit actions in the event of their failure to perform DLNR’s shoreline maintenance responsibilities.

Shoreline access and maintenance are extremely important issues that affect the State's coastal lands and the public's right to enjoy the shoreline and beaches. Landowners who live along the shoreline, however, also have important property rights.

Understanding the importance of the shoreline issues raised by HB 17 and the underlying Act, **LURF respectfully requests that this bill be held** to allow for the Legislature's review of a comprehensive report regarding what has happened since 2010 to justify the proposal to make the Act permanent; and time to allow the 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 bill's provisions and consequences.

Thank you for the opportunity to provide comments and concerns relating to this proposed measure.

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 24, 2013 2:00 PM
To: waltestimony
Cc: herminamorita@gmail.com
Subject: Submitted testimony for HB17 on Jan 25, 2013 08:30AM
Attachments: Testimony from Hermina Morita.pdf

HB17

Submitted on: 1/24/2013

Testimony for WAL on Jan 25, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Hermina Morita	Individual	Support	No

Comments: <http://repmorita.wordpress.com/2010/04/27/protecting-our-shoreline/>

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Testimony from Hermina Morita
House Bill 17, Relating to Coastal Areas
House Committee on Water and Land
January 24, 2013

The Honorable Cindy Evans, Chair
House Committee on Water & Land

Aloha Chair Evans, Vice Chair Lowen and Members of the Committee:

I strongly support House Bill 17 and would like to thank the Chair for the introduction of this measure and scheduling its public hearing so promptly. I hope House Bill 17 can move through the legislative process as quickly as possible to be enacted.

The purpose of this law is to affirm Hawaii's longstanding public policy of extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible and ensuring the public's lateral access along the shoreline, by requiring the removal of induced or cultivated vegetation by abutting landowners that interfere or encroach seaward of the shoreline.

This law has been the only successful tool in dealing with the abuse an abutting landowner that cultivates salt-tolerant vegetation to manipulate the shoreline and block lateral access along the shoreline. On April 27, 2010 I wrote an extensive blog about the history of the public use of the shoreline and ownership issues, along with photographs of the abuses that have taken place to justify why this law is necessary. I hope the Chair and Committee Members will take the time to read this article at: <http://repmorita.wordpress.com/2010/04/27/protecting-our-shoreline/>

Should you have any questions please do not hesitate to contact me. Again, thank you so much for the opportunity to testify on House Bill 17.

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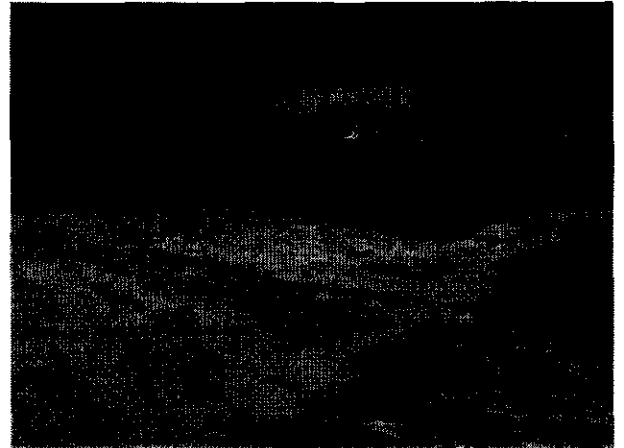
Rep. Mina Morita's Blog

Protecting Our Shoreline

Posted in [Environmental Protection](#), [Legislation/Capitol](#), [Oceans/Water](#) by Mina Morita on April 27, 2010

With the exception of one Senator (former surfer Fred Hemmings), the Legislature passed unanimously [House Bill 1808](#) to protect lateral access along our shoreline. The purpose of this measure is to make it explicit that the public has a right to transit along the shoreline and that the Department of Land and Natural Resources shall maintain access within the beach transit corridor. This measure will require that private property owners whose parcels abut the shoreline keep the shoreline passable and free from the landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach transit corridor.

Hawaii's land laws are unique in that they are based on ancient tradition, custom, practice and usage. Until the Great Mahele of 1848, under King Kamehameha III, title to all lands subject to tenant rights, including coastal lands, was the sole property of Hawaii's alii. The Mahele changed this by creating a western system of fee simple property ownership. However, throughout Hawaii's history, our Hawaiian ancestors' and our present day relationship with the sea has provided a venue for sustenance, transportation, religious practice, cultural, and recreational passions.



In the matter of Application of Ashford, 50 Haw. 314 (1968), the Hawaii Supreme Court explained that the majority of titles were conveyed in the 1850's even though the government had no knowledge of tidal datums or benchmark elevations. Therefore, there was no intention to use elevation in establishing coastal deed boundaries. In most cases, the government relied, instead, on the high water mark of the waves. In Ashford, the State of Hawaii successfully argued that traditional rights of public access existing under the monarch land tenure system, prior to the Mahele, extend to present day and include the right to traverse along the shoreline to swim, fish, and seek other varieties of seafood. The Hawaii Supreme Court decision in Ashford that "the location of a boundary described as 'ma ke kai' is along the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation or by the line of debris left by the wash of the waves" serves as the foundation of the present legal definition of Hawaii's shoreline and a long standing public policy of extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible.

Protecting Our Shoreline « Rep. Mina Morita's Blog
 Unfortunately, in the past two decades or so the state surveyor, who processes over two hundred shoreline certifications each year, experience at least half a dozen applications per year which are contested. These applications usually involve the manipulated planting of salt-tolerant plants to confuse the identification of a natural vegetated shoreline that in the past have evidenced the upper reaches of the wash of the waves. As a result of this abuse, a manipulated, vegetated shoreline may represent a loss of ten to one hundred per cent of beach width for public use and deter lateral access seaward of the shoreline.



This bill acknowledges the foresight of our Hawaiian ancestors and policymakers long before us and reaffirms and strengthens Hawaii's longstanding public policy of extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible by ensuring the public's lateral access along the shoreline. And, hopefully, with this more explicit language in statute, people like Caren Diamond and Harold Bronstein who have been guardians of the shoreline fighting in court these kinds of abusive planting and cultivating practices can get the much deserved rest from this battle.

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2 Responses to 'Protecting Our Shoreline'

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1. Beau Blair said,

Excellent blog Mina! Great work on your part too. We are so fortunate to have you watching out for the best interests of us all. Aloha

Reply

- Mina Morita said,

on April 28, 2010 on 11:58 am

Thanks Beau. Sorry I forgot to acknowledge and thank you too for your hard work and perseverance! I know Evelyn deBuhr worked on these shoreline issues too please let me know if I forgot anyone else. Again, thanks for your work too.

Reply

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 24, 2013 12:10 PM
To: waltestimony
Cc: ndavlantes@aol.com
Subject: *Submitted testimony for HB17 on Jan 25, 2013 08:30AM*

HB17

Submitted on: 1/24/2013

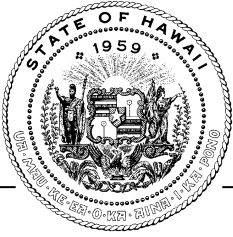
Testimony for WAL on Jan 25, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

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Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON WATER AND LAND
Friday, January 25, 2013
8:30 AM
State Capitol, Conference Room 325

in consideration of
HB 17
RELATING TO COASTAL AREAS.

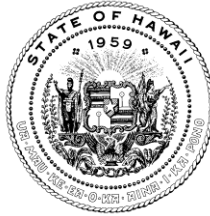
Chair Evans, Vice Chair Lowen, and Members of the House Committee on Water and Land.

HB 17, Relating to Coastal Areas, proposes to make permanent Act 160, Session Laws of Hawaii (SLH) 2010.

The Office of Planning supports HB 17 to repeal the sunset date June 30, 2013, by amending section 7 of Act 160, SLH 2010. We also note that this bill is similar to SB 1162 and HB 931 which have been submitted as part of the Governor's package.

Thank you for the opportunity to provide testimony on this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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CHAIRPERSON
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COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIAAINA
FIRST DEPUTY

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
WATER & LAND

Friday, January 25, 2013
8:30am
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 17
RELATING TO COASTAL AREAS

House Bill 17 proposes to make permanent Act 160, Session Laws of Hawaii (SLH) 2010, which requires landowners in shoreline areas to ensure that public transit beach corridors are passable and free from human-induced, enhanced, or unmaintained vegetation that blocks transit. The Department of Land and Natural Resources (Department) supports House Bill 17, which is identical to House Bill 931 and Senate Bill 1162, which have been introduced by the Administration.

Landowners that induce or allow their vegetation to grow below the shoreline would be asked to remove or trim the vegetation. If the landowner fails to comply, Act 160 allows the Department to issue a notice of violation to the landowner, assess penalties under Chapter 183C, Hawaii Revised Statutes, and to charge landowners for the cost of removal if the landowner fails to remove an obstruction. Act 160, SLH 2010, however is scheduled to sunset on June 30, 2013.

The Department has been successfully utilizing Act 160 to compel offending landowners to cut back vegetation that inhibits lateral shoreline access. Thus, Act 160 has been an effective tool to protect lateral shoreline access.

The Department supports this measure as it will make permanent the requirement on landowners that about the shoreline to control the spread of vegetation that emanates from their private property onto public beaches.