



SB1162 SD1
RELATING TO SHORELINE VEGETATION
House Committees on Ocean, Marine Resources, and Hawaiian Affairs and
Water and Land

March 15, 2013

10:30 a.m.

Room 325

The Office of Hawaiian Affairs **SUPPORTS** SB1162 SD1, which would remove the sunset provision for legal mechanisms that have helped to ensure greater public access to our beaches and shoreline areas.

Hawai'i's beaches and shoreline areas provide numerous benefits to the Native Hawaiian community and the public that are critical to our cultural values and kama'āina way of life. Our beaches and shoreline areas provide a place to bond with 'ohana and friends, help to foster positive youth development and an early appreciation for our natural resources, and provide for a variety of recreational activities, such as surfing and fishing, that have been staples of local life for generations. Moreover, access to the shoreline and the resources in the near-shore environment is critical to the perpetuation of Native Hawaiian culture and the protection of constitutionally recognized traditional and customary practices.

Accordingly, our laws have repeatedly recognized the public nature of our shoreline areas and the right of the public to access the shoreline.¹ OHA has also always been a strong advocate for shoreline access in Hawai'i and has actively worked to address a range of potential threats to our beaches and shoreline areas.

Unfortunately, the limited resources of our state agencies present significant challenges to protecting the public's right to access and use our beaches and shorelines. As this bill recognizes, particular challenges have arisen with respect to shoreline vegetation originating on private property, which may block lateral access along the shoreline and otherwise diminish the public's physical ability to safely use these areas. **This bill therefore reinforces and protects the rights of Native Hawaiians and the general public by making permanent legal enforcement mechanisms ensuring that private landowners take responsibility over plants that encroach upon our public beaches and shorelines.**

Therefore, OHA urges the Committees to **PASS** SB1162 SD1. Thank you for the opportunity to testify on this measure.

¹ See *In re Ashford*, 440 P.2d 76 (1968) (recognizing that under tradition, custom, and usage, public lands extend to the highest wash of the waves during the season of the year when the waves are highest); *County of Hawaii v. Sotomura*, 517 P.2d 57, 62-63 (1973); *Diamond v. State*, 145 P.3d 704 (2006); see also HRS §§ 46-6.5, 115-4, -5, -9.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIAAINA
FIRST DEPUTY

WILLIAM M. TAM
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

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committees on
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS
and
WATER & LAND

Friday, March 15, 2013
10:30 AM
State Capitol, Conference Room 325

In consideration of
SENATE BILL 1162, SENATE DRAFT 1
RELATING TO SHORELINE VEGETATION

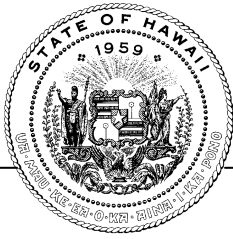
Senate Bill 1162, Senate Draft 1 proposes to make permanent Act 160, Session Laws of Hawaii (SLH) 2010. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure, with exception to the effective date. The Department respectfully requests that the effective date be restored to “June 29, 2013.**

Act 160, SLH 2010, 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.

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, the Act allows the Department to issue a notice of violation to the landowner, assess penalties under Chapter 183C, Hawaii Revised Statutes (HRS), 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 or extends seaward of the shoreline as defined in Section 205A-1, HRS. Thus, Act 160 has been an effective tool to protect lateral shoreline access.

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



**OFFICE OF PLANNING
STATE OF HAWAII**

NEIL ABERCROMBIE
GOVERNOR

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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 OCEAN, MARINE RESOURCES AND
HAWAIIAN AFFAIRS
AND
HOUSE COMMITTEE ON WATER AND LAND**
Friday, March 15, 2013
10:30 AM
State Capitol, Conference Room 325

in consideration of
**SB 1162 SD1
RELATING TO SHORELINE VEGETATION.**

Chairs Hanohano and Evans, Vice Chairs Cullen and Lowen, and Members of the House Committee on Ocean, Marine Resources and Hawaiian Affairs and Water and Land.

The Administration's Bill, SB 1162 SD1, Relating to Shoreline Vegetation, proposes to make permanent Act 160, Session Laws of Hawaii (SLH) 2010.

The Office of Planning supports SB 1162 SD1 to repeal the sunset date June 30, 2013, by amending section 7 of Act 160, SLH 2010. OP also recommends this Act take effect upon its approval.

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

KAILUA NEIGHBORHOOD BOARD NO. 31

519 WANAAO ROAD • KAILUA, HAWAII 96734
PHONE (808) 768-3710 • FAX (808) 768-3711 • INTERNET: <http://www1.honolulu.gov>
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Aloha Chair and members:

Act 160, 2010, is essential as 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.

Already one house has been built closer to the water because the owner created land by cultivating the sand. Future sea level rise will make this house more susceptible to shoreline flooding and tsunamis. So it is important that SB1162 be adopted to make Act 160 permanent not only from a beach access perspective, but also for safety reasons.

Mahalo, Charles Prentiss, Ph.D.
Chair

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) / 691-7261 (w)

March 13, 2013

COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Rep. Faye P. Hanohano, Chair

Rep. Ty J.K. Cullen, Vice Chair

COMMITTEE ON WATER & LAND

Rep. Cindy Evans, Chair

Rep. Nicole E. Lowen, Vice Chair

[SB 1162, SD1](#) RELATING TO SHORELINE VEGETATION

[Hearing](#): Friday, March 15, 2013 at 10:30 am in Conference Room 325

Aloha Chairs and Vice Chairs,

Under Section 2-14-125 of the Neighborhood Board Plan, I have been appointed as a Delegate with responsibilities to represent the **Kuli'ou'ou / Kalani Iki Neighborhood Board #2** on matters approved by the Board. As Committee Chair of the **Kuli'ou'ou / Kalani Iki Neighborhood Board #2** Legislative Sub-Committee, I am pleased to inform you **Neighborhood Board #2** strongly supports SB 1162, SD1 which makes permanent the statutory changes enacted into law (Act 160, Session Laws of Hawaii 2010) by the 2010 Legislature, to require the removal of landowner's induced or cultivated vegetation that interferes or encroaches seaward of the shoreline. **Neighborhood Board #2** represents 7,900 households, with a population of 22,281 people in East Honolulu (State House District 18, Hawaii: Profile of General Population and Housing Characteristics, 2010).

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 intimidated the public with walls, gates, keep out signs, video cameras, and dogs. There was 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

March 13, 2013

Page 2

eliminating corridors of access. This deprived residents of the precious natural resource of its beaches and had 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.

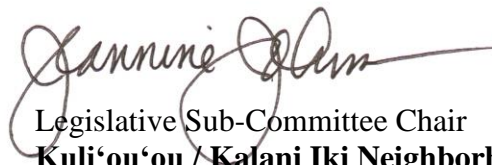
Therefore, at its November 6, 2008 meeting, **Neighborhood Board #2** voted in favor of the following:

- 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 maintained 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.

Neighborhood Board #2 strongly supports SB 1162, SD1, and respectfully requests that the 2013 Legislature make permanent the statutory changes enacted into law by Act 160, Session Laws of Hawaii 2010 by the 2010 Legislature, requiring the removal of landowner's induced or cultivated vegetation that interferes or encroaches seaward of the shoreline.

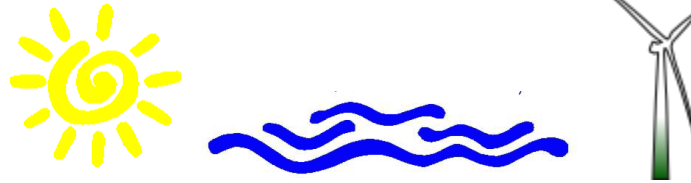
Mahalo,



Legislative Sub-Committee Chair

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

cc via email: Chair Peter Kay
Sen. Sam Slom
Rep. Mark Hashem
Councilmember Stanley Chang



LIFE OF THE LAND

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COMMITTEE ON OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS

Rep. Faye Hanohano, Chair

Rep. Ty Cullen, Vice Chair

COMMITTEE ON WATER & LAND

Rep. Cindy Evans, Chair

Rep. Nicole Lowen, Vice Chair

Friday, March 15, 2013

10:30 a.m.

Room 325

SUPPORT FOR SB 1162 SD1 – SHORELINE VEGETATION

Aloha Chairs Hanohano & Evans, Vice Chairs Cullen & Lowen & Members of the Committees!

My name is Kat Brady and I am the Assistant Executive Director of Life of the Land, Hawai`i's own energy, environmental and community action group advocating for the people and `aina for over four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SB 1162 SD1 Makes permanent the statutory provisions enacted by Act 160, Session Laws of Hawaii 2010, requiring the removal of landowner's induced or cultivated vegetation that interferes or encroaches seaward of the shoreline.

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"

Life of the Land is in strong support of SB 1162 SD1 to make Act 160 permanent by removing the sunset. **Please amend this bill to make it effective upon approval.**

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 and we are currently losing our beaches. 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 landowner's 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 preserve the uniqueness of Hawai'i and the public trust to ensure that our shorelines belong to all of us by passing SB 1162 SD1 and making it effective upon approval.

Mahalo for this opportunity to testify,

omhtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 14, 2013 12:05 PM
To: omhtestimony
Cc: almurak67@gmail.com
Subject: Submitted testimony for SB1162 on Mar 15, 2013 10:30AM

SB1162

Submitted on: 3/14/2013

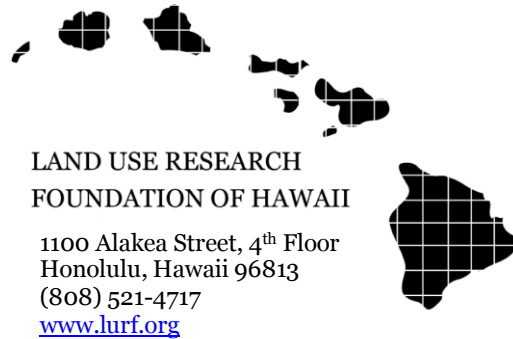
Testimony for OMH/WAL on Mar 15, 2013 10:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Murakami	Individual	Support	No

Comments: Any legislation that cracks down on induced shoreline vegetation has my support. I've seen it too many times and complained to the DLNR's OCCL division. That division needs more enforcement resources. I have encountered long delays in getting OCCL personnel to investigate and enforce violations!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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March 14, 2013

Representative Fay P. Hanohano, Chair
Representative Ty J.K Cullen, Vice Chair
House Committee on Ocean, Marine Resources, & Hawaiian Affairs

Representative Cindy Evans, Chair
Representative Nicole F. Lowen, Vice Chair
House Committee on Water & Land

Comments and Concerns Relating to SB 1162, SD1, Relating to Shoreline Vegetation. (Makes permanent Act 160, Session Laws of Hawaii 2010.)

Friday, March 15, 2013, 10:30 a.m., in 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.

SB 1162, SD1. 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 to ensure 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. While LURF generally supports the stated intent and purpose of this measure, consistent with its prior objections and concerns relating to the underlying Act, LURF maintains 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.

LURF has the following comments on, including serious concerns and objections relating to the proposed measure:

- **Portions of the Act 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 this measure 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? How many?
 - 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, LURF understands 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, it may be determined that this measure is unnecessary.
- **Danger of interpretations, enforcement or amendments which expand the scope of the Act.** LURF supports the originally stated 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, LURF 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. The following are of serious concern:
 - Sets a huge precedent if interpreted, enforced, or amended to require private citizens to assume 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 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 of the Act 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.

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 SB 1162, SD1 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 occurred since 2010 to justify the proposal to make the Act permanent; and provide the stakeholders, including, but not limited to government agencies, the public, private landowners, legal experts and other interested parties the much needed opportunity 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.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committees on Ocean, Marine Resources, and Hawaiian Affairs and Water and Land

Friday, March 15, 2013

10:30 am

State Capitol - Conference Room 325

RE: S.B. 1162, S.D. 1, RELATING TO SHORELINE VEGETATION

Dear Chairs Hanohano and Evans, Vice-Chairs Cullen and Lowen, and members of the Committees:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-HAWAII supports the intent of S.B. 1162, S.D. 1, which is similar to H.B. No. 17, H.D. 1, as proposed. The bill proposes to make permanent Act 160, SLH 2010. It requires maintenance of public beach accesses by adjacent landowners and imposes penalties for noncompliance. It also establishes shoreline access as an objective of the coastal zone management program and requires the department of land and natural resources to provide written notice to property owners affected by Act 160, SLH 2010. .

The bill proposes to make permanent Act 160, SLH 2010, which amended Chapter 115, HRS, to prohibit a private property owner from blocking or impeding public access along the public beach area by allowing vegetation from the private property to grown onto, over or along the public beach area. The bill also required the DLNR to require the private property owner to maintain the area and if not, allow the DLNR to do the maintenance at the owner's expense.

While BIA-Hawaii supports the intent of the bill, we believe that the DLNR should provide some statistics on how many times, since the law was passed in 2010, has the Department used the law to enforce the unimpeded access to the beach over privately owned public shoreline accesses. We believe that this information would justify the intent of this legislation to make Act 160 permanent.

Thank you for this opportunity to express our views.



**Testimony to the House Committees on Ocean, Marine Resources, and
Hawaiian Affairs and Water and Land
Friday, March 15, 2013
10:30 am
State Capitol - Conference Room 325**

RE: SENATE BILL NO. 1162 SD 1, RELATING TO SHORELINE VEGETATION

Chairs Hanohano and Evans, Vice Chairs Cullen and Lowen, and members of the committees:

The Chamber of Commerce of Hawaii **supports the intent of SB 1162, SD 1** which is similar to H.B. No. 17, HD 1 as proposed. The bill proposes to make permanent Act 160, SLH 2010. It requires maintenance of public beach accesses by adjacent landowners and imposes penalties for noncompliance. It also establishes shoreline access as an objective of the coastal zone management program and requires the Department of Land and Natural Resources to provide written notice to property owners affected by Act 160, SLH 2010.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

The bill proposes to make permanent Act 160, SLH 2010 which amended Chapter 115 HRS to prohibit a private property owner from blocking or impeding public access along the public beach area by allowing vegetation from the private property to grow onto, over or along the public beach area. The bill also required the DLNR to require the private property owner to maintain the area and if not, allow the DLNR to do the maintenance at the owner’s expense.

While the Chamber supports the intent of the bill, we believe that the DLNR should provide some statistics on how many times since the law was passed in 2010 did the Department use the law to enforce the unimpeded access to the beach over privately owned public shoreline accesses. We believe that this information would justify the intent of this legislation to make Act 160 permanent.

Thank you for this opportunity to express our views.

March 15, 2013

The Honorable Faye P. Hanohano, Chair

House Committee on Ocean, Marine Resources, & Hawaiian Affairs

The Honorable Cindy Evans, Chair

House Committee on Water & Land

State Capitol, Room 325

Honolulu, Hawaii 96813

RE: S.B. 1162, S.D.1, Relating to Shoreline Vegetation

HEARING: Friday, March 15, 2013 at 10:30 a.m.

Aloha Chair Hanohano, Chair Evans, and Members of the Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,000 members. HAR **submits comments** on S.B. 1162, S.D.1 which ensures public lateral access along the shoreline by permanently extending the requirement that landowners remove human-induced, enhanced, or unmaintained vegetation interfering with such access.

S.B. 1162, S.D.1 makes Act 160, SLH 2010, permanent. Act 160 amended Chapter 115 of the Hawaii Revised Statutes, by requiring the Department of Land and Natural Resources (DLNR) to maintain access within beach transit corridors by requiring landowners to keep corridors abutting their lands passable and free of the landowners' human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the corridors. Furthermore, this measure authorize the DLNR to use its enforcement powers under the Conservation District laws, such as through fines and costs associated with land or habitat restoration, to maintain access within the beach transit corridors and give offending landowners 21 days to remove the landowners' human-induced vegetation; the 21 days may be tolled by an appeal.

HAR is not opposed to prohibiting property owners from using human-induced or enhanced vegetation to block access to the beach transit corridor. However, HAR does have concerns that the term "unmaintained vegetation" may be ambiguous and have unintended consequences in its interpretation. For example, property owners in rural or less-developed areas may have hundreds of feet to miles of frontage with natural growing vegetation. It would be unreasonable and a huge financial burden, if an owner was required to remove interfering or encroaching "unmaintained natural vegetation" that was not human-induced or enhanced.

HAR respectfully requests an amendment to Act 160, SLH 2010, to remove reference to "unmaintained" natural vegetation to ensure that landowners are not adversely impacted, while still ensuring that property owners are responsible for keeping the beach transit corridor free from human-induced or enhanced vegetation.

Reference under Act 160, SLH 2010:

“(b) Along beach transit corridors where the abutting landowner's human-induced, **or** enhanced, ~~or~~ **unmaintained** vegetation interferes or encroaches with beach transit corridors, the department of land and natural resources may require the abutting landowner to remove the landowner's interfering or encroaching vegetation.”

For these reasons, we respectfully request that the Committee pass this measure with amendments.