



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
SENATE COMMITTEE ON WAYS AND MEANS
Friday, February 22, 2013
9:00 AM
State Capitol, Conference Room 211

in consideration of
SB 1162
RELATING TO SHORELINE VEGETATION.

Chair Ige, Vice Chair Kidani, and Members of the Senate Committee on Ways and Means.

Administration Bill SB 1162, Relating to Shoreline Vegetation, proposes to make permanent Act 160, Session Laws of Hawaii (SLH) 2010, to require the removal of landowner's induced or cultivated vegetation that interferes or encroaches seaward of the shoreline.

The Office of Planning supports SB 1162 to repeal the sunset date June 30, 2013, by amending section 7 of Act 160, SLH 2010.

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

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
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CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Friday, February 22, 2013
9:00 am
State Capitol, Conference Room 211

In consideration of
SENATE BILL 1162
RELATING TO SHORELINE VEGETATION

Senate Bill 1162 proposes to make permanent Act 160, Session Laws of Hawaii (SLH) 2010. **The Department of Land and Natural Resources strongly supports this Administration measure.**

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.

February 22, 2013

The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

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

DECISION MAKING: Friday, February 22, 2013, at 9:00 a.m.

Aloha Chair Ige, Vice Chair Kidani, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, offering comments on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,000 members. HAR **opposes** S.B. 1162 which makes permanent the statutory changes enacted into law, Act 160, Session Laws of Hawai'i ("SLH") 2010, to require the removal of landowner's induced, cultivated, or unmaintained vegetation that interferes or encroaches seaward of the shoreline.

S.B. 1162 proposes to make permanent Act 160, SLH 2010, which amended Chapter 115 of the Hawai'i Revised Statutes, 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.

The issue of concern is that predominantly in the outlying areas, landowners have natural growth "unmaintained vegetation" abutting transit corridors that may stretch hundreds of feet to miles of frontage. It would be unreasonable and a huge financial burden if an owner were required to remove interfering or encroaching "unmaintained natural vegetation". See description:

§115-5 Beach transit corridor defined....

(b) Along beach transit corridors where the abutting landowner's human-induced, 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. [L 1974, c 244, §5; am L 2010, c 160, §3]

HAR respectfully requests an amendment to Act 160 that would not apply to "unmaintained" natural vegetation to ensure that landowners are not adversely impacted.

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

Mahalo for the opportunity to offer comments.



SB1162
RELATING TO SHORELINE VEGETATION
Senate Committee on Ways and Means

February 22, 2013

9:00 a.m.

Room 211

The Office of Hawaiian Affairs **SUPPORTS** SB1162, 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 nearshore environment is critical to Native Hawaiian cultural perpetuation and constitutionally protected traditional and customary gathering 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 the 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 Committee to **PASS** SB1162. Thank you for the opportunity to testify.

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.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: alemorrier@gmail.com
Subject: *Submitted testimony for SB1162 on Feb 22, 2013 09:00AM*
Date: Wednesday, February 20, 2013 10:16:21 PM

SB1162

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Alicia Morrier	Individual	Support	No

Comments:

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Cc: mauibrad@hotmail.com
Subject: *Submitted testimony for SB1162 on Feb 22, 2013 09:00AM*
Date: Wednesday, February 20, 2013 4:19:24 PM

SB1162

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Brad Parsons	Individual	Support	No

Comments:

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Subject: Submitted testimony for SB1162 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 4:19:27 PM

SB1162

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Caki Kennedy	Individual	Support	No

Comments: Many land owners from the Mainland do not understand or particularly like our policies of shoreline public access; they choose to ignore them. This access needs to be enforced.

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Caren Diamond
P.O.Box 536
Hanalei, Hawaii 96714
Kaimanacd22@yahoo.com

2/21/13

Testimony in Strong Support of SB 1162“Relating to Shoreline Vegetation”

Senate Ways and Means Committee
Hearing Scheduled for February 22, 2013

Aloha Chair Ige, Vice Chair Kidani and Members of the Senate Ways and Means Committee ,

Ask anyone what comes to mind when you say Hawaii. It is almost always our incredible beaches. Our beaches need your support right now. SB 1162 gives the DLNR the tools needed to protect our public beaches. Planted and seemingly privatized, our public beaches are disappearing under mounds of planted vegetation. The fertilizer used to establish the thick growth is harming the coral reef. Land based pollutants used on the sandy beaches to establish the copious stands of planted vegetation end up in the ocean. In these pictures of one Wainiha beach, over 40 feet of sandy beach was planted, irrigated and privatized .



There is an incredible amount of beach loss due to planted vegetation on Kauai. By manipulating vegetation, landowners gain control, use and ownership of our public trust resources. Please protect our beaches, support SB 1162 and remove the sunshine date completely. Our beaches need your help now. Mahalo, Caren Diamond

February 20, 2013

Senate Ways and Means Committee
Hearing Scheduled for February 22, 2013 at 9:00 AM

Testimony in Support of SB 1162, "Relating to Shoreline Vegetation"
From Deborah Chang, Hawai'i Island Resident

Aloha Chair Ige, Vice Chair Kidani and Members of the Senate Ways and Means Committee:

I ask for your support of SB 1162, "Relating to Shoreline Vegetation." It makes Act 160 (SLH 2010) permanent.

In reading the objections that have been raised against making Act 160 (SLH 2010) permanent, I ask that you consider these important points:

- The need for Act 160 (SLH 2010) arose after it became apparent that certain shoreline property owners will ignore the Department of Land and Natural Resources' (DLNR) written requests that they clear vegetation out of the area that the public has the right to pass along the shoreline. It is this lack of cooperation that has resulted in the need for a law that will give DLNR enforcement authority to require it to be done. With the authority given to DLNR by Act 160 (SLH 2010), compliance should improve without the need to resort to actual fines.
- The Act's reference to removal of "unmaintained" vegetation is not referring to naturally occurring vegetation. It is specifically addressing "human-induced" and/or "enhanced" vegetation that has been neglected or allowed to encroach and interfere with the public's ability to safely traverse the shoreline.
- If there are pre-existing agreements that hold other parties responsible for clearing the shoreline area, those agreements should be a matter of record. The Act is not intended to supersede pre-existing agreements.
- The advisability of educating the public and landowners regarding the proper implementation of this law should not prevent the law from being made permanent. Education will be an ongoing process.

Mahalo for considering my testimony.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: akamaimom@gmail.com
Subject: Submitted testimony for SB1162 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 7:38:33 PM

SB1162

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Felicia Cowden	Individual	Support	No

Comments: We have a profound problem on Kauai of rich, private landowners not only maintaining access, but planting mature trees and vegetation to block beach access. Land owners need to ensure that access is provided.

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Cc: jemray@hawaii.rr.com
Subject: Submitted testimony for SB1162 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 8:59:21 PM

SB1162

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Janet Murray	Individual	Support	No

Comments: Hawaiian people deserve the permanent right to access the ocean. Wealthy people plant thorny vegetation to prevent access of other to 'their' ocean front. I support SB1162 allowing people access to the shoreline. No one can 'own' the shore. Mahalo.

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Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB1162 on Feb 22, 2013 09:00AM*
Date: Tuesday, February 19, 2013 10:56:10 AM

SB1162

Submitted on: 2/19/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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Cc: joncole@gmail.com
Subject: Submitted testimony for SB1162 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 4:52:40 PM

SB1162

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan R Cole	Individual	Support	No

Comments: 100% support. Save our shoreline access.

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Cc: juliahorn1@yahoo.com
Subject: *Submitted testimony for SB1162 on Feb 22, 2013 09:00AM*
Date: Wednesday, February 20, 2013 4:01:37 PM

SB1162

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Julia Horn	Individual	Support	No

Comments:

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Subject: Submitted testimony for SB1162 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 9:13:30 PM

SB1162

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
tlaloc tokuda	Individual	Support	No

Comments: Aloha members, i would like to take this time to press upon you to please support Bill SB1162 "Relating to shoreline vegetation" (public access). This is a very important legislation because it give the DLNR teeth to keep public access of the coast line our rights hopefully for all times and not a two year reprove. thank you and hope you support this bill and not listen to the Hi. Assoc. of Realtors and the Land Use Research Foundation who both have vested interest in making the coastline exclusive instead of inclusive. please make this law for all times. Mahalo

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Cc: sundownertoni@yahoo.com
Subject: Submitted testimony for SB1162 on Feb 22, 2013 09:00AM
Date: Thursday, February 21, 2013 8:45:12 AM

SB1162

Submitted on: 2/21/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Toni Withington	Individual	Support	No

Comments: Coastal access is a primary objective of the North Kohala district on the Big Island. Blocking access by private land owners is a major problem. Please help us get back access.

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