

**TESTIMONY OF THE STATE ATTORNEY GENERAL
SECOND SPECIAL SESSION OF 2007
TWENTY-FOURTH LEGISLATURE**

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ON THE FOLLOWING MEASURE:

S.B. NO. 1, S.D. NO. 1, RELATING TO TRANSPORTATION.

BEFORE THE:

HOUSE COMMITTEES ON TRANSPORTATION AND FINANCE

DATE: Monday, October 29, 2007 **TIME:** 1:30 PM

LOCATION: State Capitol, Auditorium
Deliver to: House Clerk's Office, Room 027, 1 copy

TESTIFIER(S): Lisa M. Ginoza, First Deputy Attorney General

Dear Chairs Souki, Oshiro and Members of the Committees:

I testify in support of S.B. No. 1, S.D. No. 1. S.B. No. 1, S.D. No. 1 represents a reasonable compromise that both allows the Hawaii Superferry to operate and helps protect Hawaii's environment. Among the provisions in the law are those that require the immediate imposition of conditions on the operations of the Superferry, while reserving to the Legislature the right to impose additional conditions. The bill also requires a complete Environmental Impact Statement, not just an Environmental Assessment, immediately establishes a Task Force to study and report on operations, and has a sunset provision in mid-2009.

The Legislature acting to amend the law in light of a court decision is neither unprecedented nor unusual, and it is fully in line with the role of the Legislature to enact our laws. The Hawaii Supreme Court has interpreted the law as it now reads, but it is the constitutional responsibility of the Legislature to decide if that is how the law should remain for the future.

While some have stated publicly that the bill is unconstitutional, I wholly disagree. A seminal case in point is Robertson v. Seattle Audubon Society, 503 U.S. 429 (1992). In Robertson, a unanimous United States Supreme Court upheld a

Congressional enactment that had the effect of changing the result of a federal court environmental case involving the spotted owl, logging, and the Endangered Species Act. The Court found that even if a Congressional enactment had the effect of changing a result in a case, it was within the Congress's power to effect such a change by changing the law and changing applicable standards. That is precisely what this bill does. It is wholly forward looking, and thus constitutional.

Moreover, there are many other examples of legislative bodies acting to exempt specific projects or categories from the environmental review process. In 1998, the Legislature passed a law, Haw. Rev. Stat. § 343-6.5, that very simply stated: "The purchase of the assets of the Waiahole water system shall be specifically exempt from the requirements of chapter 343." In 1995, the Legislature adopted Haw. Rev. Stat. § 183B-2 that exempted from Chapter 343 the "reconstruction, restoration, repair, or use of any Hawaiian fishpond" in certain circumstances. There are no doubt other examples in Hawaii's laws.

An example that directly affects Hawaii is Congress's exemption of H3 construction from federal environmental laws. Court decisions had stopped construction of the H3. At the request of Senator Inouye and others, Congress exempted H3 from a number of provisions of law. As hawaiihistory.org describes it: "Hawaii's Senator Inouye removed the last obstacles by winning the project legal exemption from all federal environmental laws."

<http://www.hawaiihistory.com/index.cfm?fuseaction=ig.page&PageID=354>

This law terminated the lawsuits and the project was able to proceed. There are many other examples of similar actions by legislative bodies.

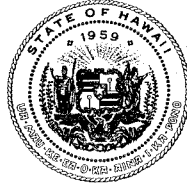
Nor is passing legislation in response to a specific court decision in any way unusual in Hawaii or anywhere else.

Act 58, Session Laws of Hawaii 2007, for example, adopted over the Governor's veto, specifically reversed the decision of the

Hawaii Supreme Court in United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Hawaii 359, 105 P.3d 236 (2005) regarding management rights. And in Act 112, Session Laws of Hawaii 2006, the Legislature overruled the decision of the Hawaii Supreme Court in Kienker v. Bauer, 110 Hawaii 97, 129 P.3d 1125 (2006), relating to joint and several liability. This is a common occurrence, and part of the normal constitutional process of the courts interpreting the law as it is written, and the Legislature then determining whether that is the law as it ought to be.

While there is no doubt that opponents of this bill will challenge it, challenges to the Legislature's authority to enact this bill should not succeed.

It is the Legislature's role to decide policy in Hawaii. I respectfully suggest that S.B. No. 1, S.D. No. 1 represents good policy and ought to be enacted into law.



Deputy Director
Michael Formby

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

October 29, 2007

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

COMMITTEE ON TRANSPORTATION
COMMITTEE ON FINANCE

BILL NUMBER: SENATE BILL NO. 1, SD 1

TITLE: RELATING TO TRANSPORTATION

DESCRIPTION: Requires the Department of Transportation to perform an environmental impact statement (EIS) for certain improvements made to commercial harbors. Permits operation of large capacity ferry vessel company prior to completion of EIS upon meeting certain minimum conditions. Establishes a temporary Hawaii Inter-island Ferry Oversight Task Force. (SD 1)

DEPARTMENT'S
POSITION:

We support this bill that will permit operation of a large capacity ferry vessel while environmental studies are conducted and the formation of a temporary Hawaii Inter-island Ferry Oversight Task Force.

COMMENTS:

The Department of Transportation supports the proposed legislation, which encourages and advances viable ocean-based inter-island transportation alternatives in the State of Hawaii.

The legislature acknowledged and recognized the viability and importance of this alternative mode of inter-island travel through unanimous support of the large capacity ferry vessel project in 2004 through Senate Resolution 79 and SCR 149.

The Department of Transportation believes it is critical for the Legislature to permit the operation of large capacity ferry vessels and the continued construction and use of State of Hawaii harbor infrastructure pending completion of the required environmental review process.

The environmental consulting firm of Belt Collins was competitively selected by DOT to complete the environmental review and DOT has allocated a budget of \$1,000,000 for the review process. Based on the complexity of the issues and the anticipated comments from the

community, it is expected to take between 1 and 1 ½ years to complete the process. As DOT is the agency conducting the environmental review, it will be involved in the consultation and coordination of issues between Belt Collins, the community and the large capacity ferry vessel.

The Department of Transportation is prepared to work with the temporary task force established by the proposed legislation. DOT is prepared to provide support and assistance to the task force to facilitate its work and coordinate the submission of monthly reports to the Legislature and Governor.



State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON
TRANSPORTATION AND FINANCE
OCTOBER 29, 2007
1:30 P.M.

SENATE BILL 1, S.D.1
RELATING TO TRANSPORTATION

Chairpersons Souki and Oshiro and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 1, S.D. 1 to permit the operation of an inter-island ferry service in the State of Hawaii while an environmental impact statement is being conducted, while at the same time, ensuring that there is adequate protection of the environment. We support this bill.

There is a critical need for more transportation options and improved transportation infrastructure. Unlike other states which have access to rail and trucks, Hawaii is dependent on only two means of moving products into the State and between islands. Hawaii's farmers and ranchers are geographically disadvantaged compared to mainland farmers and ranchers because of the costs and conditions involved in moving agricultural products across the ocean. An additional ferry vessel will provide more transportation capacity for our farmers and ranchers to reach their markets.

The Department of Agriculture (HDOA) has trained the Superferry staff and is confident that their staff will screen appropriately for agricultural commodities.

Superferry has set a higher standard for invasive species mitigation measures which is over and above any other transportation carrier currently operating in Hawaii. Even so, we will continue to monitor their operations.

This bill will also establish an oversight task force for the purpose of examining the impact of inter-island ferry operations on the communities, environment, and harbor and other infrastructures and HDOA is included on the task force.

HDOA continues to work towards strengthening our biosecurity program to assess and mitigate risks of the introduction and spread of invasive species. The United States Department of Agriculture (USDA) and HDOA will collaborate to assess the movement of red imported fire ant and other invasive species from the continental United States to Hawaii. Together, we will be implementing an Agricultural Quarantine Inspection Monitoring (AQIM) pilot project on the maritime pathway. Due to the concerns about inter-island movement, the Department has requested and USDA has agreed to add on the inter-island segments as well. The long term goal is to facilitate risk-based decision-making by both HDOA and USDA using data that identifies risk factors associated with various entry pathways and commodities destined for Hawaii and between the islands. The pilot project will not be conducted on Superferry alone, but on the entire transportation system.

In summary, large capacity inter-island ferry service creates another important option for farmers to transport their products to market. This can open up opportunities for farmers to expand their customer base and explore different modes of distribution.

Ms. Heidi Guthrie
Policy Advocate
for Native Rights
and Culture, OHA



SB 1, SD 1, RELATING TO TRANSPORTATION
House Committees on Transportation and Finance

October 29, 2007

1:30 pm

Auditorium

The Office of Hawaiian Affairs (OHA) **SUPPORTS, WITH RESEVERATIONS,** SB 1, SD 1, Relating to Transportation, Second Special Session of 2007. To explain, OHA supports the environmental review process, which pursuant to HRS Chapter 343 includes a Cultural Impact Assessment; the Superferry; and permitting the ferry to operate while a statutorily prescribed Environmental Impact Statement (EIS) is completed, and ultimately subject to final acceptance by the accepting agency. OHA agrees that protective conditions must be established during the interim, but also requests that long-term conditions be placed on the Superferry, as established by the outcome of the EIS. OHA further urges the Legislature, based on OHA's Constitutional and statutory mandates, and our vested interest in State harbors, all of which are on ceded lands, to provide a seat for an OHA representative on the oversight advisory task force established by this measure and to require consultation by the governor and administration as they develop their proposed conditions.

The Senate's amendments improve upon the measure somewhat, although the legislative conditions have dulled teeth and are reliant upon the ferry company to follow through on the application process for an Incidental Take Permit (which will also require a Habitat Conservation Plan), as NOAA asked them to do almost three years ago. The amendments also rely upon the State funding enough personnel and training them to enforce the introduced species conditions. OHA urges the legislature and administration to have the ferry pay for at least part of those conditions. OHA also respectfully urges the legislature to ensure that long-term conditions are based on the findings of the accepted Final EIS.

OHA respectfully reminds the Committees of our responsibilities and integral concerns for our beneficiaries' cultural and natural resources. Our statutory mandates include the following requirements: "To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians" (Hawaii Revised Statutes, § 10-6(a)(4)), and "Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians." (HRS, § 10-3(4)). OHA has yet to be consulted on this issue, and this bill, as it now stands, would not allow OHA to fulfill its statutory mandates or our beneficiaries a legitimate opportunity to provide their knowledge,

expertise and wisdom to any element of the ferry's continued existence.

Hawai'i's environmental review process strives to create a balanced decision-making arena for developers and managing agencies: balancing development/economic needs with environmental/health needs. This balanced approach, with ample public participation, provides government agencies with the ability to make informed decisions about a proposed project, and how to balance that project with environmental and cultural protections.

This bill would allow that both during and after the completion of the bill's tailored EIS - until the measure sunsets - the ferry may run, any agreement may be made by the ferry and a State agency, and harbor improvements may be constructed and used, with no public or agency review. Also, instead of strictly following Chapter 343 and its implementing rules, per this bill, the measure's EIS would not explicitly require, for example, a Cultural Impact Assessment. Thus, OHA would not be able to fully analyze and assess the interim actions and impacts of these State agencies and the ferry on Native Hawaiians, Hawaiian culture, or our submerged, ceded lands. Nor are there assurances that the findings of the accepted Final EIS will be used to develop the long-term conditions applied to the ferry's operations.

The ferry company simply must agree to comply with conditions set by a Governor's Executive Order, the contents of which are not even included in the proposed legislation. Thus, the Legislature, the public and OHA are asked to rely on the administration's environmental conditions for the ferry. This is the same administration that continues to state that no further environmental review or analysis is required by the Department of Transportation or the Superferry, despite the finding of the Hawai'i State Supreme Court. Neither OHA nor the public would have a chance to analyze or review that Executive Order. The State's environmental law and OHA are completely bypassed.

Not only Chapter 343 is avoided, however. Per this bill, the Superferry and Department of Transportation's actions are exempt from any further public or OHA scrutiny, even at the county level until this measure sunsets, because "[t]he construction, use, or operation of any facilities or improvements authorized by any agreement between a large capacity ferry vessel company and a state department, board, commission or agency shall not be subject to or require any county permits or approvals." (Part II, Section 3, subsection 6). Also, the bill gives the governor full authority to bind the ferry without following standard Administrative Procedures, thus taking every decision out of the public domain. (See Part II, Section 4, subsection a).

Please note that all of the existing and potential harbor improvements are on State, ceded, public trust lands. Thus, major impacts on those lands should require legitimate and complete environmental and cultural review. Equally, any administrative

consultation and oversight task force must include an OHA representative, and the task force's reports should have some teeth. The current bill simply states that the task force will report to the Legislature and governor, not how the reports will be used.

Thus, while OHA supports the Superferry and permitting it to operate while an Environmental Impact Statement (EIS) is completed, we urge that the EIS be prepared and accepted pursuant to existing HRS Chapter 343, that protective conditions established during the interim should not just be provided by the governor, with long-term conditions to be placed on the Superferry that are established by the accepted Final EIS. OHA further urges the Legislature, based on OHA's vested interest in the use of the State harbors, all of which are on ceded lands, to provide a seat for an OHA representative on the oversight advisory task force established by this bill and require the governor and administration to consult with OHA in the development of the ferry's operating conditions.

Thank you for the opportunity to testify, and for taking our concerns into account.

COUNTY COUNCIL
BILL "KAIPO" ASING, CHAIR
MEL RAPOZO, VICE CHAIR
TIM BYNUM
JAY FURFARO
SHAYLENE ISERI-CARVALHO
RONALD D. KOUCHI
JOANN A. YUKIMURA



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STATEMENT of
COUNCILMEMBER JOANN A. YUKIMURA
before
The House Committee on Transportation
The House Committee on Finance
Re: The Hawai'i Superferry

October 29, 2007
Auditorium
State Capitol

Chairs Souki and Oshiro, and Members:

Thank you for inviting input on this watershed issue for the state of Hawai'i. The bill before you is not just about the Hawai'i Superferry—it is about something far more important. It is about governmental process and integrity and how we do business as elected officials in making decisions on behalf of the people and future generations of Hawai'i.

This testimony, prepared on Saturday night, October 27, 2007, will be short. I will have more complete testimony when I speak before you on Monday and will have copies thereof for you at that time. I speak as in individual Councilmember and not on behalf of the Kaua'i County Council; however, the position of the Council with respect to an EIS is clear. I quote from Resolution 2005-15, passed unanimously by the Kaua'i County Council on January 26, 2005—more than two and a half years ago:

“BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI’ . . . that it requests the Department of Transportation, Harbors Division, to require that an Environmental Impact Statement (EIS) be completed prior to commencement of the Hawaii Superferry operation to identify and address possible negative effects of this new service to Kaua’i, or in the alternative, the Council requests that the Hawai’i Superferry itself voluntarily engage in such a process and live out its commitment to responsible planning and socially conscious corporate action.”

And what was the reason for this position of a unanimous Kaua'i County Council? Here again is text from the resolution”

“. . . it is not the intention of the Council, in the absence of convincing analysis to stop or obstruct the Superferry; rather, it is the intention of the Council to protect

Statement by Kaua`i Councilmember JoAnn A. Yukimura
Before House Committees re Hawai`i Superferry
October 27, 2007
Page 2.

the land and people of Kaua`i against a degradation of the environment and social fabric by encouraging a proper planning process that would prevent or mitigate possible negative impacts of the proposed Superferry to an acceptable level. . . .”

The Hawai`i Environmental Policy Act (HEPA) is very clear and very sound. The whole purpose of the EIS law is to provide a framework for the community to come together in an orderly fashion to think about potential significant impacts, to look at ways to prevent or mitigate the negative impacts, to consider alternative ways to achieve the same purpose to make sure we aren't overlooking a better alternative, and to allow the participation of everyone who wants to participate in the process. Often the community impacts are the most far-reaching and often the most overlooked by the proposer of the action because they tend to be externalities—things that do not affect the proposer of the action as much as they affect innocent bystanders.

Many times the impacts are unintended but very harmful to individuals and the collective wellbeing. For example, DDT killed vermin and mosquitoes and helped to stop the spread of disease or harmful insects, but it also entered the food chain and ended up killing useful species and contaminating mothers' breast milk. The main idea of an EIS is to “think before we act.” It is a concept that underlies good business planning as well as good public planning. It can avoid unnecessary costs as well as identify and prepare for obstacles that might keep an enterprise from attaining its goals. It is designed to incorporate other societal values (such as protecting the environment and culture) into the decision-making process besides just the goal of economic growth and development, which ironically often gets hurt as well if the environment is overlooked (witness how sewage spills or coqui frogs affect tourism or unplanned development and resentful residents makes a visitor destination less desirable.)

The EIS law should not be abrogated nor denied application to one business no matter how desirable the business may be. Indeed to say that a business is in the public interest begs the question if an EIS has not been done. The very purpose of the EIS is to help us decide whether a proposed action is in the public interest—and to help us ensure it is so with conditions that will prevent or mitigate the potential negative impacts.

If the House and the Senate pass a bill as proposed by either the House or the Senate, this action will go down in history as one of the saddest and darkest days of state governmental decision-making.

There is another way—that might even allow the Superferry to run while an EIS is being prepared. It would take courage of the type described in John F. Kennedy's book, Profiles in Courage, and a kind of leadership that is rare in Hawai`i's history. But it can be done. And I will outline the proposal when I appear before you on Monday. Thank you for this opportunity to submit testimony.

October 29, 2007

Representative Joseph M. Souki
Chair, Committee on Transportation
Representative Marcus R. Oshiro
Chair, Committee on Finance
Hawaii State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

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**Re: Second Special Session of 2007
SB 1 SD 1 Relating to Transportation**

Dear Chairs Souki and Oshiro and Members of the Committees on Transportation and Finance:

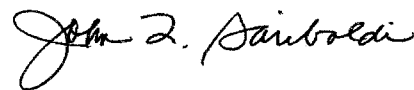
Hawaii Superferry, Inc. appreciates the extraordinary efforts of the State of Hawaii legislature to address the unique situation that we face today.

Hawaii Superferry supports the bill before today you for your consideration. The amendments included in SB 1 SD 1, including those imposing conditions regarding whale avoidance and invasive species, are acceptable to Hawaii Superferry.

We believe that the bill before you is a reasonable and balanced solution that will give Hawaii Superferry and its 308 employees an opportunity to demonstrate the benefits we and many others believe it can provide. We are prepared to resume operations following the passage of this bill, creating an opportunity for the people of Hawaii to enjoy and benefit from a proven transportation alternative.

Hawaii Superferry urges the committees to pass SB 1 SD1. Thank you for this opportunity to testify.

Respectfully submitted,



John L. Garibaldi
President and Chief Executive Officer



Sierra Club Hawai`i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON TRANSPORTATION HOUSE COMMITTEE ON FINANCE

October 29th, 2007, 1:30 P.M.

TESTIMONY IN OPPOSITION SB1 SD1, ALLOWING OPERATION OF SUPERFERRY BEFORE COMPLETION REQUIRED ENVIRONMENTAL REVIEW, PROPOSED AMENDMENTS

Chairs Souki and Oshiro and members of the Committees:

The Sierra Club, Hawai`i Chapter, with over 5500 dues paying members statewide, is opposed to SB1 SD1, a measure to allow the Superferry to begin operations prior to completion of the required environmental review. The measure before you is unfair, sets a dangerous precedent, damages Hawaii's three-decade old environmental protection act, and may expose Hawaii's fragile environment to irreparable harms. Beyond our objections to this process, the additional "conditions" imposed by the Senate Draft 1, while meritorious, do not go far enough to protect Hawaii's natural resources and communities.

As was demonstrated at public hearings on the neighbor islands this week, Hawai`i residents have significant concerns not only about the environmental impact of the Superferry, but also the decision process—both by the Superferry and the Lingle Administration—involving this new transportation mode. The bill being considered today does little to address those concerns; rather, passage of the bill would likely further inflame the situation.

However, recognizing that the House and Senate are close to passing legislation that fails to adequately protect our environment while exempting Superferry, we are compelled to support a compromise draft that add minimal operating conditions to afford some protection for the environment and communities while the review is underway. The floor amendment offered by Rep. Hermina Morita (HD1 FA1) last Friday provides a reasonable balance given the circumstance.

We believe it is the responsibility of the legislature—the body that is granting this unusual and risky unique privilege to the Superferry company—to be accountable for the potential adverse impacts of the Superferry and therefore place reasonable conditions on its operation. We also believe that the perception of the legislature would benefit by supporting this reasonable compromise draft and assuaging some of the more significant concerns of individuals and organizations statewide.

The Floor Amendment draft that we ask you to consider including in the SB1 SD1 before you makes three critical changes:

1. A new purpose clause describes the current situation more accurately and objectively.

This is a critical change. The original purpose clause drew strong criticism from advocates, the UH Environmental Center, and legal experts for being revisionist history, damaging the existing environmental review statute, and affecting ongoing court cases. To protect Hawaii's existing environmental review law, we believe the following language **MUST BE DELETED FROM THE SENATE DRAFT**, at a minimum (SB1 SD1 Page 1, Lines 15 through 18 to Page 2, Lines 1 through 4):

Seldom, if ever, has a judicial determination overturned harbor improvements and business operations that were previously authorized by the government and approved by the lower court approximately two years earlier. Such an occurrence is not explicitly contemplated in chapter 343, Hawaii Revised Statutes, and is not consistent with the intent of the legislature. As such, the policy that applies under law should be amended and clarified.

This language will do lasting damaging to Hawaii's environmental review law. Deleting it is a reasonable change that has no bearing on the main purpose of the legislation: to allow Superferry to sail.

2. Adding additional minimal operating conditions.

Since the legislature is in essence "pre-judging" the environmental impacts of Superferry operations, it is necessary to err on the side of caution while the review is completed. Our fragile environment and communities demand it. The following two conditions are minimal protections to augment the few conditions in the Senate draft.

- **In waters less than 200 fathoms deep, the vessel must travel at speeds less than 13 knots.** Such a condition would help to protect over 75% of the whale population in Hawaiian waters – a condition that is amply supported by literature on whale congregations. This condition would add a minimal amount of time to the vessel travel time, as most of the route takes the ferry over deeper waters. We estimate that the additional time for Honolulu – Kauai trips would be 15 minutes and for Honolulu – Kahului trips, 30 to 45 minutes.
- **Undercarriage cleaning of vehicles for invasive species removal.** This condition was originally proposed by experts on the Maui Invasive Species Committee, as they found that many invasives on private vehicles may cling to the undersides. The condition as drafted in the measure provides flexibility, allowing Superferry to choose the technology to complete the cleaning—either using a liquid, air blasts, brushes, or vacuum.

3. Putting mitigation recommendations into action via the Public Utilities Commission (PUC) docket.

The EIS process for this vessel has little value unless the environmental mitigation strategies recommended by the study are actually implemented. In the current draft legislation, it is unclear if any requirement exists to actually implement proposed mitigation when the study is completed. The condition proposed by this draft measure would allow the PUC to place conditions on the vessel's operation as they see fit when the EIS is complete. We believe the PUC is the appropriate government body for such oversight and decisionmaking, as they were involved with earlier Superferry permitting. Further, the PUC process allows for public input, judicial review, and enforcement.

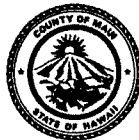
This special session asks you to do something extraordinary. While we disagree with this political fix, we would support a reasonable compromise to allow the Superferry to sail while minimal environmental conditions are implemented and lasting mitigation controls put in place via the PUC process. We hope you will support this compromise for the sustainability of Hawai'i.

Mahalo for the opportunity to testify.

Council Chair
G. Riki Hokama

Vice-Chair
Danny A. Mateo

Council Members
Michelle Anderson
Gladys C. Baisa
Jo Anne Johnson
Bill Kauakea Medeiros
Michael J. Molina
Joseph Pontanilla
Michael P. Victorino



Director of Council Services
Ken Fukuoka

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October 29, 2007

TO: Honorable Joseph M. Souki, Chair
House Committee on Transportation

Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: G. Riki Hokama
Council Chair

A handwritten signature in black ink, appearing to read "G. Riki Hokama".

DATE: October 29, 2007

SUBJECT: **OPPOSITION TO SB1, SD1, RELATING TO TRANSPORTATION**

Thank you for the opportunity to testify in opposition to this measure. The purpose of this measure is to permit the operation of an inter-island ferry service in the State of Hawaii while an environmental impact statement is being conducted.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I continue to maintain that the State government should not allow the Superferry to commence operations without the benefit of an environmental assessment and a possible environmental impact statement. However, should this measure proceed through the legislative process, I support the following amendments contained in this measure:

1. The requirement that the Superferry apply for a National Oceanic and Atmospheric Administration incidental-take permit, which requires a filing of a Federal plan to discuss how it would handle the accidental striking of a whale.
2. The requirement that a National Marine Fisheries Service observer be on the ferry when traveling through whale waters.
3. The requirement that the ferry would have to post signs forbidding passengers from taking fishing nets or soil and dirt on board. In addition, please consider adding sand and rocks to the prohibited list.
4. The requirement that passengers declare all plants and fruits or invasive species.
5. The requirement that the ferry would have to inspect all vehicles prior to boarding.

I respectfully ask that a further amendment be considered to clarify and strengthen the neighbor island composition of the ferry oversight task force. I strongly urge that such County representatives be more than token members of the task force created by Section 13 of the proposed bill.

The Superferry issue raises larger questions regarding the pace of growth in our communities and the perception that government favors the needs of the visitor industry, high-end developers, and other outside interests over the needs of hard-working local people. Our people have reached their limits, but our State administration seems unaware of the polarization and division that already exist within our neighbor island communities. The State administration's way of addressing this issue exacerbates the problem. If these issues continue to be ignored by the State government, we may see a social and political revolution of the same magnitude as the 1954 revolution that swept in a new generation of political leaders.

There was time for the State administration and the Superferry's promoters to do the studies necessary to adequately consider the public's concerns. Yet, they chose to rely on an exemption with a questionable legal basis. To excuse the State administration for such tactics would, in the long run, undermine respect for the Legislature as well as our laws.

Thank you for your consideration of my comments. I would be pleased to answer any questions you may have.

COUNTY COUNCIL

COUNTY OF KAUAI

Resolution

No. 2005-15

RESOLUTION REQUESTING
THAT AN ENVIRONMENTAL IMPACT STATEMENT
BE PREPARED ON THE HAWAII SUPERFERRY

WHEREAS, Hawai'i Superferry, in association with Austal USA, is proposing to provide non-stop, roundtrip, ferry service daily between the islands of Hawai'i, Kaua'i, Maui, and Honolulu commencing in the year 2006; and

WHEREAS, this service provided by the world's newest and largest passenger vehicle catamaran will help to connect the islands and could transform the State, positively or negatively; and

WHEREAS, this operation plans to eventually expand its fleet by the year 2008 with additional ferries and service twice daily to each island; and

WHEREAS, Hawai'i Superferry intends to provide an efficient, environmentally friendly, state-of-the-art, ferry service for passengers and vehicles between the islands at approximately half the price of flying; and

WHEREAS, this system will expand our State's transportation infrastructure and economy by hopefully lowering the cost of travel and shipment of goods and agricultural products; and

WHEREAS, although this service promises many benefits to the residents of Kaua'i, it could also create or exacerbate problems, such as an increase in crime and the spread of invasive plants and animal species, such as the fireweed, the mongoose, and coqui frog, to Kaua'i; and

WHEREAS, the spread of the mongoose or coqui frog could cause untold damage to the environment, economy, and visitor industry; and

WHEREAS, this daily service could also burden the existing State harbors and highway infrastructure since it will transport up to 900 passengers and 250 vehicles per ferry, with plans for expansion by the year 2008; and

WHEREAS, good planning requires a thorough and methodical anticipation of impacts and the identification and implementation of ways to prevent or mitigate the negative impacts; and

WHEREAS, it is not the intention of the Council, in the absence of convincing analysis, to stop or obstruct the Superferry; rather, it is the intention of the Council to protect the land and people of Kaua'i against a degradation of the environment and social fabric by encouraging a proper planning process that would prevent or mitigate possible negative impacts of the proposed Superferry to an acceptable level; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that it requests the Department of Transportation, Harbors Division, to require that an Environmental Impact Statement (EIS) be completed prior to commencement of the Hawai'i Superferry operation to identify and address possible negative effects of this new service to Kaua'i, or in the alternative, the Council requests that the Hawai'i Superferry itself voluntarily engage in such a process and live out its commitment to responsible planning and socially conscious corporate action.

BE IT FURTHER RESOLVED, that copies of this Resolution be transmitted to Governor Linda Lingle, Mayor Bryan J. Baptiste, the Kaua'i Legislative Delegation, the State Department of Transportation, Harbors Division, the State Department of Agriculture, Quarantine Division, the Kaua'i Invasive Species Committee, John Garibaldi, CEO, Hawai'i Superferry, Tim Dick, Founder and Chairman, Hawai'i Superferry, Greg Metcalf, CEO, Austal USA, and John Cole, Executive Director, Division of Consumer Advocacy.

Introduced by:

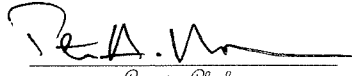

JOANN A. YUKIMURA

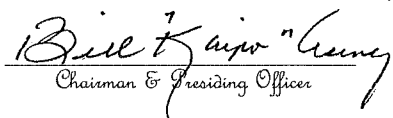
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	Bye	May	Exc
Asing	X		
Fufaro	X		
Isari-Casalho	X		
Kaneshiro	X		
Rapozo	X		
Tokioka	X		
Yukimura	X		
Total	7	0	0

Certificate Of Adoption

We hereby certify that Resolution No. 2005-15
was adopted by the Council of the County of Kaua'i, State of Hawai'i,
Lihue, Kaua'i, Hawai'i, on January 26, 2005.


County Clerk


Chairman & Presiding Officer

Dated 1/27/05

hseinpersonsbtestimony

16

From: Sherry Menor-McNamara [SMenor@cochawaii.org]
Sent: Sunday, October 28, 2007 9:45 AM
To: hseinpersonsbtestimony
Subject: #0016 SB 1
Attachments: SB 1 SD1.doc

Aloha,

Please find attached testimony for tomorrow's House hearing on SB1 SD1. If you have any questions, please do not hesitate to contact me at 545-4300, x394.

Sincerely,

Sherry Menor-McNamara
Vice President, Business Advocacy and Government Affairs
The Chamber of Commerce of Hawaii

**Testimony to the House Committees on Transportation and Finance
Monday, October 29; 1:30 p.m.
State Capitol Auditorium**

RE: SB 1, SD1 – Relating to Transportation

Chairs Souki and Oshiro, Vice Chairs Nishimoto and Lee, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's support in allowing the operation of an inter-island ferry service in the State of Hawaii while an Environmental Impact Statement is being conducted.

The Chamber is the largest business organization in Hawaii, representing 1,100 businesses, which employ over 200,000 workers. Approximately 80% of our members are small businesses with less than 20 employees.

Based on a membership survey that was conducted prior to the Special Session, 94% of the responding Chamber members, agreed that the Superferry should be allowed to operate while an environmental impact assessment is done. More than 700 of our members responded to the survey, which clearly demonstrates their interest in this issue.

If the Superferry is forced to leave, it will have a significant negative impact on future capital investments in Hawaii. The state's economy and reputation will be affected, as well as its businesses and citizens. Therefore, a balanced approach is not only prudent, but in the best interest of our State.

Thank you for the opportunity to submit written comments.

hseinpersonsbtestimony

From: Capt. Ed Enos [edgin16@hawaii.rr.com]
Sent: Sunday, October 28, 2007 9:51 AM
To: hseinpersonsbtestimony
Subject: #0017 Testimony for hearing on Monday 29th October 2007

17

ATTN: House Committee on Transportation and House Committee on Finance
DATE: Monday October 29, 2007
TIME: 1:30 PM Auditorium, State Capitol

SB1, SD1 RELATING TO TRANSPORTATION

Dear Chairs Souki and Oshiro:

My name is Captain Edward Enos Jr. and I strongly support Hawaii Superferry. I am here again today to urge you to vote in support of this bill that will allow all of the people of Hawaii Nei, an alternative means of moving their vehicles, cargo, and personal effects inter-island.

I am employed in the maritime industry here in Hawaii. I have worked aboard tugs operating inter-island, as well as commercial merchant ships all over the world. I am currently working as a Harbor Pilot. I have been a ship's Pilot since 1994. I have been intimately connected with the maritime industry here in Hawaii my entire adult life. My testimony last Thursday and again today is based on my own first hand knowledge and personal experiences, or knowledge I have gained from extensive and repeated discussions with my peers in the maritime industry.

Last week on Thursday the 25th, during public testimony, I provided all of you a broad overview of my knowledge of ocean transportation issues as they apply to local shipping companies. In reviewing my own testimony, I stand by what information I provided you. However, I would like to add an important caveat to my prior statements.

Those who heard my testimony, especially my lengthy comments on the speeds of various vessels traveling inter-island, may have taken my statements out of context. In addition, my comments on the lack of concern or due diligence, with regard to inspecting vessels and their cargoes for invasive species might also be misinterpreted.

It is of the utmost importance to me today, that you all understand the main thrust of my point that I might not have articulated as well as I had hoped. Some may have heard my comments about Matson, Horizon Lines, Young Brothers, PASHA, and the numerous cargo ship companies and passenger cruise lines as disparaging remarks about how they operate. On the contrary, let me make it clear today. I was trying to illustrate what is considered normal operational procedures by all cargo carriers and cruise ships "today", as we speak.

There has been a tremendous amount of testimony in court, at public meetings, and within these legislative hearings that I interpret as hearsay or conjecture. I have attempted to provide you during this phase of the legislative process, a more honest and accurate view of what's "really going on out there" in our local shipping industry. My intention is that you take this information and use it as a basis for how you examine the Hawaii SuperFerry and her daily operations of the ALAKAI.

When you are considering operational restrictions with regard to the ALAKAI'S speed, her routes taken between the islands, inspection procedures of passengers and vehicles on the docks prior to boarding, the placement of NOAA representatives onboard to monitor her daily operations, or any other type of restriction; consider too, what other ocean transport companies are already doing today. Or more importantly NOT doing. Only then will you realize what you are asking the crew of the ALAKAI to accomplish each day.

Let me make it clear that I personally am not opposed to making all cargo and passenger ship companies abide by the same rules that protect Hawaii's unique environment both on land and at sea. But everyone must abide by the same rules. You cannot hamstring one company with well intended rules and simultaneously, let everyone else do whatever they

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want. This scenario will neither protect the environment, nor allow the singled out company to eventually operate profitably. Both the Hawaii SuperFerry and residents of Hawaii will live in a "lose-lose" situation.

The Department of Agriculture representatives stood here last week and specifically told you that there is very little being done on a normal basis each day, to prevent the movement of invasive species inter-island. In fact, the thrust of their efforts are to ensure nothing unwanted comes in from beyond Hawaii's shores. I applaud their work and support their efforts to acquire more funding and resources to stop the influx of unwanted flora and fauna into Hawaii. In the future, if resources permit, they should make the same effort with regard to the movement of people and cargo inter-island. But this effort needs to be accomplished at the airports as well as our harbors.

In the meantime, if those who oppose the Hawaii SuperFerry are truly concerned about invasive species and the protection of Humpback whales, they should direct their efforts at all the airlines that fly interisland, as well as all the maritime companies that sail inter-island. But I would caution everyone to be careful what you wish for. You may get what you want, at a very hefty price.

Local outer-isle residents already pay "more" for being at the very end of a long ocean transportation system. To put anymore restrictions with regard to speed, vessel and cargo inspections, limitations of the routes that any ship or barge can take, or anything else that slows down and makes this transport of people, food and fuel even slower or longer than it already is, will do so at the expense of making our system incredibly inefficient, more expensive, and ultimately not save the whales or our environment as much as people might hope for.

Each year there are on average 3000 transits of commercial cargo and passenger ships into and out of the State's commercial deepwater ports. This is NOT counting the ships that go into and out of the anchorages at Kona and Lahaina. This also does NOT include movements of naval vessels and submarines transiting Pearl Harbor, nor does it include commercial fishing vessels visiting all the State's harbors. Then of course there are hundreds of privately owned recreational boats. To my knowledge, there has been no recent documented whale strike involving large ships, in recent memory that I am aware of, given the thousands of ships that move all around our islands every year.

Having lived on the Big Island last year I became even more acutely aware of how delicate our ocean transportation system truly is. In spite of my direct involvement working within this system, I am guilty too; of taking for granted how well this system works. After the earthquake last year, that virtually shut-down Kawaihae harbor for a few days due to cracks on the main pier (which still exist today), it raised my level of understanding of how extremely vulnerable our lifeline is to Honolulu, via our primary inter-island carriers, namely Young Brothers and Hawaiian Tug and Barge. Our gasoline, diesel fuel, and jet fuel are primarily moved by Sause Brothers Ocean Towing and Smith Maritime. Cement and lumber for our booming construction industry are also moved by Sause Brothers.

Anything that happens that impedes the efficient movement of these consumer goods, whether it is due to a hurricane, tsunami, earthquake, or just as detrimental; a politically or environmentally motivated restriction; all these things will require that all local residents pay even more for the "price" of living in paradise.

The Hawaii SuperFerry will provide an alternative means of moving people, cargo, and vehicles inter-island. It can be done quickly and efficiently. Relative to the "real" costs of air transport, aside from the current air fare war we are currently observing, it can be done economically and competitively.

In closing, I would like to reiterate my comments about the crew of the ALAKAI. The professional men and women who have sought employment with this company are highly trained and I expect them to operate their vessel in as safe a manner as I do when I go to work. The same can be said for all the other hundreds of men and women who work in the local maritime industry each day. We are all examined intensely, licensed, and regulated by the US Coast Guard. In addition, we have State regulations we must observe. There are no "cowboys" out here who operate their ships and tugs without due regard to the marine environment. Half of the work we do aboard ships and tugs involve the accomplishment of a variety of tasks that is demanded of us by State or Federal regulation. Every individual is subject to participating in repeated drills, inspections, examinations, drug and

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alcohol testing, and must abide by all the rules and regulations or be subject to monetary fines and imprisonment, at the will of the Coast Guard. Remember, I'm talking about the individual crewmembers and officers, not the company executives.

Please pass this bill and allow the crew of the ALAKAI a chance to prove to all Hawaii what the possibilities are. Mahalo.

Capt. Edward Enos

edgin16@hawaii.rr.com

479-1022



PACIFIC WHALE FOUNDATION

#18

300 Ma'alaea Road, Suite 211 Wailuku, Hawaii 96793
Phone: (808) 249-8811 • Fax: (808) 243-9021 • www.pacificwhale.org

October 28, 2007

Re: SB 1, SD 1
RELATING TO TRANSPORTATION.

Requires the Department of Transportation to perform an environmental impact statement (EIS) for certain improvements made to commercial harbors. Permits operation of large capacity ferry vessel company prior to completion of EIS upon meeting certain minimum conditions. Establishes a temporary Hawaii Inter-island Ferry Oversight Task Force. (SD1)

My name is Gregory D. Kaufman, President and Founder of Pacific Whale Foundation. I am speaking on behalf of Pacific Whale Foundation's 140 Maui- employees and its 275,000 members and supporters both in Hawaii and around the world.

My message is simple: do not create special legislation allowing a start-up business to operate without complying with Hawaii's environmental laws particularly HRS 343. We believe such an act would be both illegal and unconstitutional.

If, for some unfathomable reason you choose to pursue this unprecedented action, and venture down this slippery legal slope, we recommend the following conditions be made an integral part of SB1 SD1:

1. Route: The large capacity ferry (LCF) should never be allowed to use its' proposed southern route, which transits waters of Penguin Banks and south of Molokai. All travel to and from Maui must be north of Molokai and never enter waters less than 1000 fathoms, unless on entry to and from Kahului or Honolulu Harbors.
2. Speed: In waters depths of 1000 fathoms or less, LCF be limited to speeds of 13 knots or less.
3. Whales: Given the proposed operator of the LCF has acknowledged (in court) their high-speed vessel has a 100 yard blind spot in front of it, whereby any whale surfacing in this area will be hit (and likely killed), HSF must obtain an Incidental Take permit for endangered humpback and sperm whales found in Hawaii's waters. HSF will be required to apply for such a permit from NOAA's Office of Protected Resources and comply with all such requirements as detailed under Section 10 of the Endangered Species Act prior to operation.
4. Mitigation of Blind Spot: To help reduce the likelihood of the LCF hitting whales found inside its 100 yard blind spot, LCF be required to install a series of

cameras on its bow, and the video from these cameras be routed to the wheelhouse whereby a dedicated observer be required to monitor them at all times during operation.

5. Observers: LCF must employ three independent and trained marine observers to detect cetaceans, monk seals and endangered turtles year round. Two observers would be dedicated to forward detection, with the third observer monitoring the bow camera video feed.
6. Approach Limits: LCF be required to abide by their own self-imposed approach restrictions (*see their PUC application*) to humpback whales based upon the Atlantic Right Whale Code which limits approach to no closer than 500 yards and requires that should a vessel find itself within 500 yards to a whale, that it reduce its speed to “a slow safe speed” of 12 knots and depart the area.
7. Marine Life Mitigation Plan: LCF be required to develop, in concert with State and Federal agencies, a Marine Life Mitigation Plan minimizing impacts to whales, dolphins, endangered and threatened turtles and endangered monk seals, and other marine life.
8. Nighttime operations: During humpback whale breeding and calving months, November 1 to June 1, LCF must curtail all nighttime operations. Operation hours will be limited from 30 minutes prior to sunrise to 30 minutes after sunset.
9. Air pollution: To minimize air pollution created by LCF’s massive engines, the vessel must be required to burn on-road diesel only, and be encouraged to utilize a bio-diesel blend ensuring lower emissions. Further the vessel should be retrofitted with hospital grade mufflers to reduce emissions.
10. Wake: Wake damage from ferries is a serious problem in every community they operate. LCF must reduce its speed to 6 knots or less while within one nautical mile of any shoreline.
11. Research: LCF be required to fund independent research identifying distribution and abundance of cetaceans along its routes and to determine long-range effects of these populations due to its operation.
12. Hawaii Inter-island Ferry Oversight Task Force: This task force should be comprised of independent scientists and representatives from non-governmental agencies – not associated with the LCF. State and Federal agencies should serve as ‘resource’ members to the task force only.

I thank you for your time and consideration of this matter.

Sincerely,

Gregory D. Kaufman
President & Founder
PACIFIC WHALE FOUNDATION

#19

KAT BRADY * P.O. Box 37313 * Honolulu, Hawai`i 96837-0313



Name of person submitting testimony: Kat Brady for myself
I will be presenting oral comments
Contact #: 927-1214/katbrady@hotmail.com

COMMITTEE ON TRANSPORTATION

Rep. Joe Souki, Chair
Rep. Scott Nishimoto, Vice Chair

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair

Date: Monday, October 30, 2007
Time: 1:30 p.m.
Place: State Capitol Auditorium
Bill #: STRONG OPPOSITION TO SB1, SD1

Aloha Chairs Souki and Oshiro and Members of the Committees!

My name is Kat Brady and I am testifying in my own behalf today. I continue to be strongly opposed to any attempt to bailout the superferry that has sailed around the law fueled by political connections.

The courts have spoken. The law was broken. Let the judicial process continue unimpeded. Honor the three separate branches of government. Please uphold democracy. Please set a good example for our youth.

It is unbelievable to me that a project of this magnitude would be allowed to proceed without first understanding the potential for harm. The message such an action would send about good government is, frankly, frightening. It says that any bully can come to Hawai`i and cozy up to the administration, ignore the concerns of the public, lose their case in the courts, and then hold a gun to the heads of our policymakers demanding a fix. Wow, that's at least one felony. I hope they know we have a three strikes law.

Passing a bill also sends a message about the kinds of employment we wish for our people. When the manager of the Maui operation revealed in questioning that Maui had 36 employees, 2 that were full time and 34 part time with no health benefits, I wondered how these furloughed employees could fly over to O`ahu. I wish all the employees of superferry well and hope that they find meaningful work to sustain them and their `ohana. This is not about the people who were furloughed. It is not about the proponents.

It is about fairness. It is about equal application of the law.

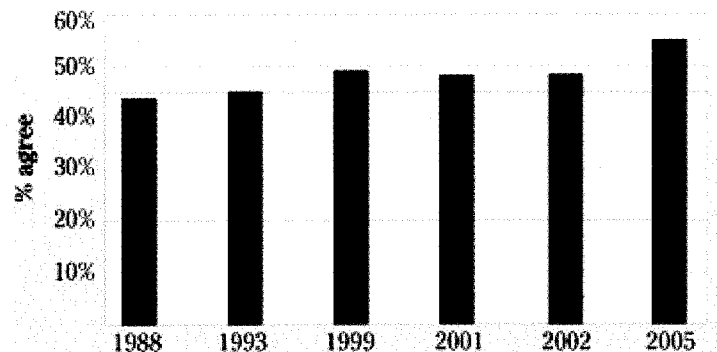
I know the Senate is beginning to understand the breadth and depth of peoples' dissatisfaction and I hope that the House is coming to that realization as well. The Hawai`i Tourism Authority's poll, as reported in the April 11, 2006 Honolulu Star Bulletin (<http://starbulletin.com/2006/04/11/news/story01.html>) is revealing:

"In 2005, for the first time, a majority -- 55 percent -- of the 1,352 Hawaii residents surveyed agreed with the statement, "This island is being run for tourists at the expense of local people." "

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TOURISTS VERSUS LOCALS

Here is how residents responded over the years to the question, "Do you agree or disagree that this island is being run for tourists at the expense of the local people?"



Source: Hawaii Tourism Authority

STAR BULLETIN

The 2050 Sustainability poll (http://hawaii2050.org/images/uploads/2050_Plan_Draft.pdf) dated September 22, 2007 revealed that more than 61% of the respondents stressed the importance of protecting the environment.

"If protecting the environment means my family and I pay more taxes, I accept that.
28.5% strongly agree; 32.8% somewhat agree"

Our communities on all islands are feeling stressed. This data confirms that. Many people are feeling ignored. Many friends on outer islands have told me that they believe that the decisions made at the Legislature are all about O'ahu. You have an opportunity to change that today.

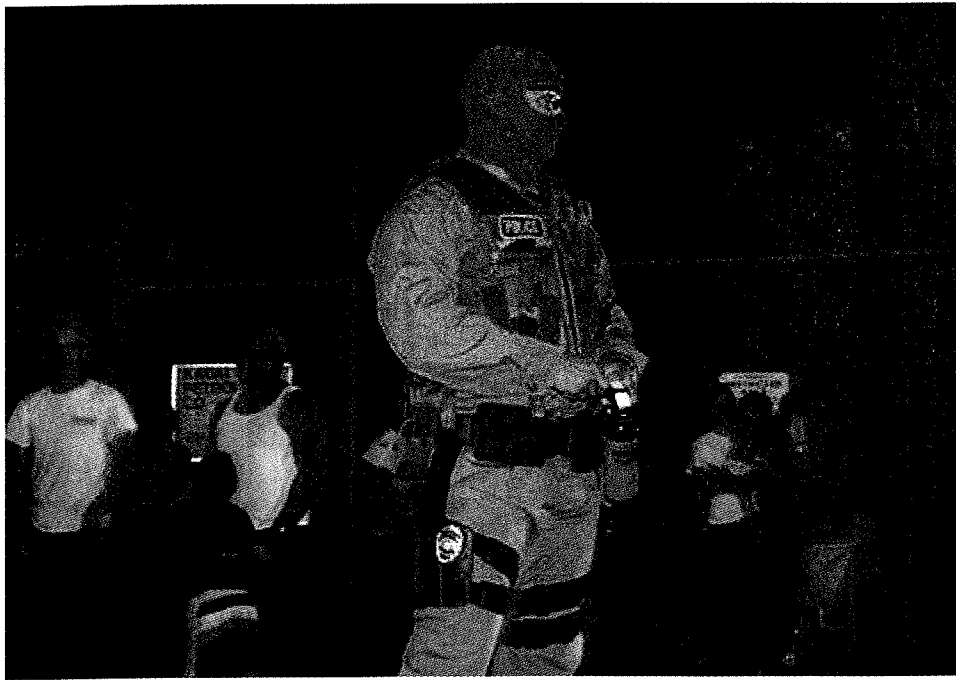
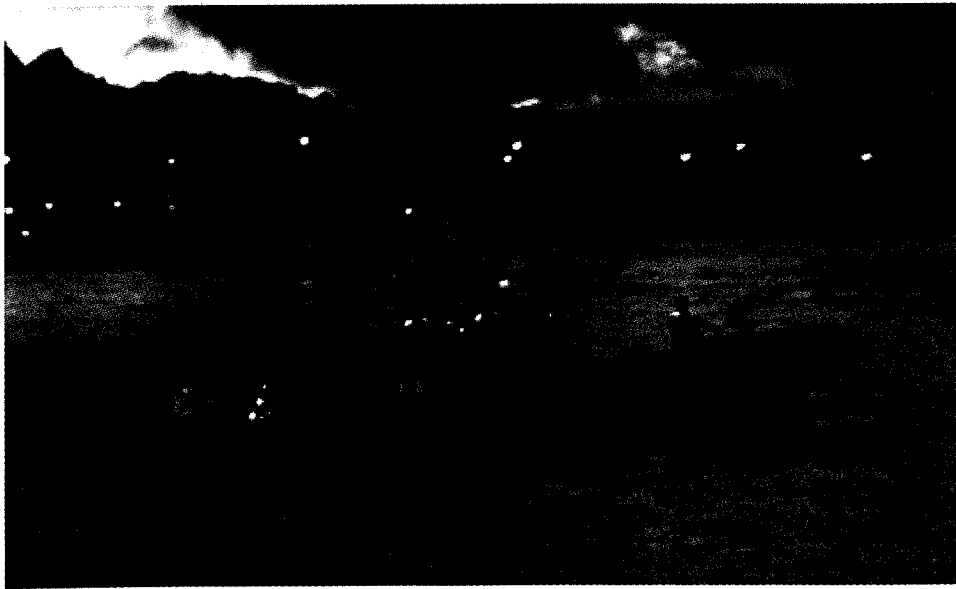
This issue is the cumulative impact of not hearing the people. When the Senate went to Kaua'i, Maui, and Hawai'i Island, they were greeted with aloha. Why? Because they went to listen and to hear the concerns of people who have been ignored.

Since you have been handed this mess to sort out, I strongly agree with asking the auditor to conduct an investigation of the exemption and how we got into this awful mess. In fact, that is the only part of the bill that I agree with.

In closing, I ask you all to consider the gravity of this situation before you vote. This is the straw that has broken the proverbial camel's back. I pray that you hear the frustration of the people. You are receiving a very strong message from people who want to uphold the law. A bailout bill for the superferry is wrong. And as friends from across the country have said to me, why isn't Hawai'i standing up for it's main economic engine – the environment? This story has been blasted around the world. Please know that you will be remembered for your vote in this watershed battle. The people haven't been this fired up in decades.

This struggle really points to what kind of future do we want for Hawai'i Nei? I sincerely hope it's not the awful photographs below taken at the August 2007 protest in Nawiliwili Harbor. I still can't believe this is Hawai'i, when people whose voices have been ignored, are threatened by the coast guard with 50 caliber machine guns unsheathed and manned while SWAT teams were at the harbor surrounded by families holding babies and toddlers. Is this how we deal with dissatisfaction? A 'Unified Command'? That's the sign of a government that fears its people. That is not democracy.

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You have the opportunity to restore people's faith in our government. You can show people that you respect the laws you enact, that you respect that there are three separate branches of government, that you will stand up to bullies, and that you will protect and defend our constitution and laws for the benefit of all the people of Hawai'i.

As Dr. Martin Luther King, Jr. said:

"The ultimate measure of a person is not where one stands in moments of comfort and convenience, but where one stands in times of challenge and controversy."

Mahalo nui.

Kat Brady

#70

hseinpersonsbtestimony

From: Dick Mayer [dickmayer@earthlink.net]
Sent: Sunday, October 28, 2007 11:39 PM
To: hseinpersonsbtestimony
Subject: #0020 Testimony: SB 1, SD 1 Relating to Testimony

From: Dick Mayer
1111 Lower Kimo Dr.
Kula, Maui, HI 96790
Tel 808-878-1874
Cell 808-283-4376
Email: dickmayer@earthlink.net

**HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
SECOND SPECIAL SESSION OF 2007**

COMMITTEE ON TRANSPORTATION
Rep. Joseph M. Souki, Chair
Rep. Scott Y. Nishimoto, Vice Chair

COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Testimony for 1:30pm Monday October 29, 2007

There are numerous faults in the Senate Bill SB 1 SD 1 that need correction:

- 1) This bill will create a Hawaii Superferry monopoly because all subsequent ferries will need to go through the HRS 343 requirements, PUC requirements, SMA and other rules and regulations that are made inapplicable under the proposed House and Senate proposals.**
- 2) There is no time limit on the EIS completion, therefore the ferry may operate w/o an EIS for an extended period.**
- 3. There is no ability by the State to require the mitigation measures recommended in the EIS.**
- 4) The Ferry need agree only to the governor's conditions, but not to those recommended by the legislature.**
- 5) The application for a federal "take permit" does not require the Ferry to actually receive the permit before operating.**
- 6) No agency has even approved the HSF Whale Avoidance Policy. To-date it has only been "accepted" by the Whale Sanctuary Council; they never approved it. There is no one to enforce even this minimum policy.**

This rushed piece of legislation will eventually cost the state \$\$millions in lawsuits. Do NOT pass SB 1 SD 1 now. Let the first Superferry leave Hawaii;do the EIS and get the mitigation measures in place; then allow the 2 superferries operate.