
February 6, 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: H.B. 931, Relating to Shoreline Vegetation

HEARING: Wednesday, February 6, 2013 at 8:30 a.m.

Aloha Chair Hanohano, Chair Evans, and Members of the Joint Committee:

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 **opposes** H.B. 931 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.

H.B. 931 proposes to make permanent Act 160, SLH 2010, which amended Chapter 115 of the Hawaii 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 testify.

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omhtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 1:15 PM
To: omhtestimony
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Subject: Submitted testimony for HB931 on Feb 6, 2013 08:30AM

Categories: OMH/WAL 02-06-13 830am3

HB931

Submitted on: 2/4/2013

Testimony for OMH/WAL on Feb 6, 2013 08:30AM in Conference Room 325

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

Comments: This Act should be made permanent. Residents of Kailua are slowly losing beach access due to the inconsiderate actions of a few.

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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Jeannine Johnson, Legislative Sub-Committee Chair

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

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[HB 931](#) RELATING TO SHORELINE VEGETATION

[Hearing:](#) Wednesday, February 06, 2013 at 8:30 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 HB931, 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 eliminating corridors of access. This deprived residents of the precious natural resource of its

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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. (See signed Resolution attached.)

Neighborhood Board #2 strongly supports HB931, 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