



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 951, RELATING TO LANDOWNER LIABILITY.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 3, 2009 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Caron M. Inagaki, Deputy Attorney General

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Chair Karamatsu and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to provide limited liability to landowners of unimproved lands for injuries or damages that occur outside the landowner's property caused by naturally occurring land failures.

The State of Hawaii owns and manages millions of acres of public lands, many of which are unimproved conservation or forest reserve lands. The bill would allow the State to serve the public interest to keep these lands in their natural state without fear of liability for damages occurring outside the boundaries of its lands caused by unpredictable and naturally occurring land failures, such as landslides and rockfalls.

The bill makes clear that the natural condition would still exist despite minor alterations such as the installation or maintenance of utility poles, fences, and signage. The bill also allows for maintenance activities for prudent land management such as forest plantings or weed, brush, rock, boulder, and tree removal. We would suggest, however, that the word "minor" be inserted at the beginning of section 663-3(3) to make it clear that the natural condition would not be maintained by substantial maintenance activities that significantly alter the condition of the land.

Thus, landowners who are protecting and managing public trust resources on unimproved lands are encouraged to act prudently and responsibly to maintain and manage these lands without fear that their actions to remove or mitigate potential hazards would be a material "improvement" that would take them out of the protections afforded under this bill.

We respectfully request that this bill be passed.

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
**LAURA H. THIELEN**  
Chairperson

Before the House Committee on  
**JUDICIARY**

Tuesday, March 3, 2009  
2:00 p.m.  
State Capitol, Conference Room 325

In consideration of  
**HOUSE BILL 951**  
**RELATING TO LANDOWNER LIABILITY**

House Bill 951 relieves landowners of liability for any damages, injury, or harm to persons or property outside the boundaries of the landowner's land caused by naturally occurring land failure originating on unimproved land. The Department of Land and Natural Resources (Department) appreciates that this bill includes a portion of the intent of one of the Administration's proposals, House Bill 1140 (RELATING TO LAND FAILURE). Although preferring the Administration measure, the Department supports House Bill 951 as it provides conditional protection from liability for private and public landowners for land failures resulting from natural conditions on their lands that may cause damage outside or off of their lands.

This bill preserves the State's natural beauty for future generations by protecting and preserving large tracts of public and private lands in their original condition and natural state. Due to the vast amount of unimproved lands, and the state policies to maintain these lands in their natural state, dangerous natural conditions occur throughout the State that could expose landowners to liability. Urban sprawl and zoning approvals by county agencies have allowed urban and residential development to expand into and adjacent to many areas susceptible to land failure or rockfall hazards. The Department, other state and county agencies, and private landowners are increasingly being called upon to mitigate reported hazards occurring in natural conditions on their unimproved lands. The burden falls on the upslope landowner, when they typically had no say or ability to influence prior zoning and development decisions that allow development in harms way.

For private landowners, many of these lands are conservation lands - not appropriate for development - and continued exposure to lawsuit or requests to mitigate or compensate for harm or injury caused on unimproved lands from naturally occurring natural conditions may force many landowners to sell or develop these lands to cover liabilities, or sell or turn over lands to the State or other government entities to avoid and shift liability to the general public. The

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
FIRST DEPUTY

**KEN C. KAWAHARA**  
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  
KAIHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

typical cost for rockfall mitigation projects usually runs in the millions. By example, the current estimated costs for Komo Mai hillside and the Old Puunui Quarry projects are \$2,100,000 and \$1,760,000, respectively. If either case had involved an incident resulting in injury or death, the litigation and judgment costs alone would have far exceeded the mitigation costs and seriously impacted the State's fiscal health. Dwindling state resources cannot correct these hazards triggered by unwise urban sprawl.

A limited tort liability exemption for the State was created by Act 82, Session Laws of Hawaii 2003, for harm or injury caused on improved public lands (basically, state and county parks and the statewide trail and access system). The existing tort liability exemptions may not adequately address or apply to the scenario where a dangerous condition originating from public lands is the cause of damage, injury, or harm on adjacent or nearby properties. Act 82 does not cover liability on private property. This bill will protect owners of unimproved land from these liabilities and help to keep these lands in conservation in their natural state.

The Department notes however that House Bill 1140, like this bill provides conditional protection from liability for private and public landowners for land failures resulting from natural conditions on their lands that may cause damage outside or off of their lands. In addition, House Bill 1140 attempts to take a more comprehensive approach to dealing with the issues of land failures by, among other things: 1) requiring a developer to assess land failure risks in potentially hazardous areas and provide appropriate buffers or mitigation and notice of the risk before county approval processes; and 2) giving government agencies the authority to mitigate or require mitigation of land failure hazards on private property.

The Department supports providing conditional protection from liability for private and public landowners from land failures resulting from natural conditions on their lands that may cause damage outside or off of their lands. The Department also supports a more comprehensive approach and suggests that the Committee consider portions of House Bill 1140 for inclusion into this measure, to the extent that the title of this bill is broad enough to encompass those other provisions that offer a more comprehensive approach to this problem.

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# **BIA-HAWAII**

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**BUILDING INDUSTRY ASSOCIATION**

March 3, 2009

Committee on Judiciary  
Conference Room 325

Honorable Jon Riki Karamatsu, Chair  
Committee on Judiciary  
State Capitol, Room 325  
Honolulu, HI 96813

**RE: HB 951 “Relating to Landowner Liability”**

Relieves the landowner of liability for any damage, injury or harm to persons or property outside the boundaries the landowner’s land caused by naturally occurring land failure originating on unimproved land.

Chair Karamatsu and Members of the Committee on Judiciary:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii supports the passage of HB951, “Relating to Landowner Liability.”

BIA-Hawaii supports HB951, which is intended to provide a level of protection to landowners from “acts of god” events. It would provide some legal certainty with respect to the legal duties and obligations of landowners arising from the inherent risks of land failures caused by natural conditions on unimproved lands, where the landowner has not created or increased the risk of harm by artificial improvements or alterations to the land.

Thank you for the opportunity to express our views on this matter.



Executive Vice President & Chief Executive Officer  
BIA-Hawaii

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) / 537-7261 (w)

March 1, 2009

### COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

HB 951

RELATING TO LANDOWNER LIABILITY

Hearing:

Tuesday, March 03, 2009 at 2:00 pm in Conf. Room 325

Aloha Chair Karamatsu, Vice Chair Ito and Honorable Committee Members,

As Committee Chair of the **Kuli'ou'ou / Kalani Iki Neighborhood Board #2** Legislative Sub-Committee, it is my duty to inform you **Neighborhood Board #2** strongly opposes HB951 which relieves landowner of liability for any damage, injury, or harm to persons or property outside the boundaries of the landowner's land caused by naturally occurring land failure originating on unimproved land. **Neighborhood Board #2** represents over 6,000 households, with a population of almost 20,000 people (State of Hawaii Data Book 2002) in East Honolulu.

The 'Āina Haina-Niu Valley-Kuli'ou'ou areas in our District have a long history of flooding, rockslides, boulders, slope instability:

- December 3, 1950: Landslide of rocks, tree stumps and mud came down a mountainside on Manauwea Street and a section of the roadway ripped off.
- November, 1956: A 1,000-pound boulder loosened by torrential rains smashes into a Niu Valley home, stopping short of a bed on which a woman is sitting.
- July, 1958: A boulder crashes into an 'Āina Haina yard, narrowly missing a mother and her three children.
- March 5, 1958: A large boulder fell on Hao Street, a landslide of mud and debris covered a section of Ahuwale Street, and tons of rock knocked down a retaining wall on Hind Iuka Drive.
- February, 1961: A 2-ton rock strikes an 'Āina Haina home.
- August, 1962: Eight-year-old Lei Ushijima is killed by a boulder at her 'Āina Haina home.
- September, 1962: A 6-ton boulder crashes through the wall of an 'Āina Haina home, causing a woman and her two daughters to run from the house.
- February 4, 1965: Rains washed rocks onto Kalaniana'ole Highway in 'Āina Haina.

COMMITTEE ON JUDICIARY

March 1, 2009

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- November 14, 1965: Landslide reported on Hao Street.
- December 18, 1967: Niu and Kuli'ou'ou Streams flood homes after becoming dammed with rocks and other debris. Niu Stream was "choked full with boulders, many piling up at Kalaniana'ole Highway bridge" per Honolulu Star Bulletin. A landslide was also reported in 'Āina Haina on Leighton Street.
- New Year's Eve 1987-1988: Debris flows containing large boulders, some the size of vehicle tires, directly impacted several homes in Kuli'ou'ou Valley and piling debris onto Kalaniana'ole Highway. Rain triggered a large landslide high in the Kūpaua Valley that sent tons of mud, rock, and other debris downstream into lower Niu Valley, obstructing drainage channels and flooding a number of homes and a shopping center and burying some vehicles in mud. A two foot thick layer of mud, rocks and debris crossed Kalaniana'ole Highway near 'Āina Haina.
- April 1, 1989: Landslides in the 300 block of 'Ānonia Street scar the mountainside.
- March 19-20, 1991: A landslide of rocks, some the size of basketballs, were reported at Hawai'i Loa Street in Niu Valley and blocking Kalaniana'ole Highway with two feet deep of rocks. Drainage along 'Anolani Street in Niu Valley was plugged with big rocks causing flooding. Landslides of mud and debris block Lani, Kahinu, and Aimoku Streets in Kuli'ou'ou Valley and Leighton, Manauwea and Olapa Streets in 'Āina Haina.
- October, 1992: A girl is injured when a boulder crashes through her family's Niu Valley home.
- August 4, 2004: A boulder the size of an armchair rolls down the mountain and is stopped by a fire hydrant on 'Anolani Street in Niu Valley.
- April, 2006: A family on 'Ānonia Street in Niu Valley has a landslide in their back yard.
- August, 2006: A 300 pound boulder knocked a hole through a cement wall of a Kuli'ou'ou home on Mo'omuku Place at about 3:30 am, sending cement pieces crashing to the ground just a few feet away from where two-year-old Saydee Kauila was sleeping.
- August 14, 2008: A 4-foot boulder rolled down Kulepiamoa Ridge, sideswiped a home at upper Haleola Street, crashed through a wooden fence and cinderblock wall and landed on the sidewalk.
- Sometime between August 14 and August 20, 2008, another 500-pound boulder rolled down Kulepiamoa Ridge onto the side yard at upper Haleola Street.

Although HB951 says its purpose is to codify the common law that currently exists in Hawai'i, relieving landowners of liability for any damage, injury, or harm to persons or property outside the boundaries of the landowner's land caused by naturally occurring land failure originating on unimproved land, would give landowners whose land has a history of rockfall and landslide hazards license to ignore even the hazards that pose a safety risk for residential neighborhoods located below.

COMMITTEE ON JUDICIARY

March 1, 2009

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Your opposition to HB951 is respectfully requested.

Mahalo,

  
Legislative Sub-Committee Chair  
**Kuli'ou'ou / Kalani Iki Neighborhood Board #2**

cc via email: Chair Robert Chuck  
Sen. Sam Slom  
Rep. Lyla Berg  
Rep. Barbara Marumoto  
'Āina Haina Community Association  
Niu Valley Community Association

# Niu Valley Community Association

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Jeannine Johnson, Secretary  
5648 Pia Street, Honolulu, Hawai'i 96821  
Phone: 373-2874 (h) / 537-7261 (w)  
March 1, 2009

## COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

HB 951            RELATING TO LANDOWNER LIABILITY  
Hearing:        Tuesday, March 03, 2009 at 2:00 pm in Conf. Room 325

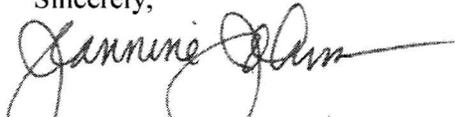
Aloha Chair Karamatsu, Vice Chair Ito and Honorable Committee Members,

On behalf of the Niu Valley Community Association, we request your opposition to HB951 which relieves landowner of liability for any damage, injury, or harm to persons or property outside the boundaries of the landowner's land caused by naturally occurring land failure originating on unimproved land. Niu Valley is a close-knit community with over 700 families in Niu Valley proper and another 100 who reside in Niu Beach and Niu Peninsula.

As reported in the attached stories by the Honolulu Advertiser and Star Bulletin, a 4 foot boulder rolled down Kulepiamoa Ridge, which is unimproved land, on August 14, 2008, sideswiped a home at 6041 Haleola Street, crashed through a wooden fence and cinderblock wall and landed on the sidewalk. Then, according to the attached KHON story, another 500 pound boulder came crashing down the valley walls onto the side yard at 6033 Haleola Street. It was fortunate that no one was injured in these incidents; however, residents are especially worried about one even larger boulder perched on the Ridge which they call "Killer." Our requests to have the landowner remove this extremely hazardous and life-threatening boulder have been so far unsuccessful.

The Niu Valley Community Association respectfully requests your opposition to HB951. Mahalo for your consideration.

Sincerely,



Jeannine Johnson, Secretary

cc:    Sen. Sam Slom  
      Rep. Lyla Berg  
      Rep. Barbara Marumoto  
      'Āina Haina Community Association

## Boulder strikes again in Niu Valley

*By Lacy Matsumoto  
Advertiser Staff Writer*

For the second time in the past two weeks, a Niu Valley property has suffered damage from a falling boulder.

The incident, which happened sometime Monday or Tuesday, occurred two houses down from last week's rock fall.

The boulder, measuring 3 1/2 feet by 2 feet, smashed through the property of Glen and Wendy Taira, landing in the family's backyard. Along the way, it damaged a fence and a drain hose that sits about 6 feet from the home, in the 6000 block of Haleola.

Last week, a boulder scraped the side of a home, smashing a gutter, crushing a flower bed, tearing a hole through a cinderblock wall and finally landing on the sidewalk in front.

On Tuesday, the residents of the second damaged home noticed a tear in the fence.

"We saw the hole in the fence yesterday morning. My husband saw something on the side of the house; when he investigated he found the boulder," Wendy Taira said.

"When the first boulder fell last week, there was no break in the fence, so it must have happened sometime early this week," she said. "We called a police officer and asked whether I need to call the Department of Land and Natural Resources. He said the boulder came from a private property owner and that it wasn't their jurisdiction.

"I'm concerned. If it's going to happen it's going to happen, but something should be done about the other rocks," Taira said.

Neighborhood residents are more worried about a boulder they have nicknamed "The Killer." The large boulder, which appears to be the size of a small car, is perched above the homes.

"We estimate it's probably a few tons. It's been up there for the last 20-some odd years since we've lived here. It looks very precarious. The more we look at it, we think it's going to be a real problem when it falls because momentum of that one coming will be worse than the others," Taira said.

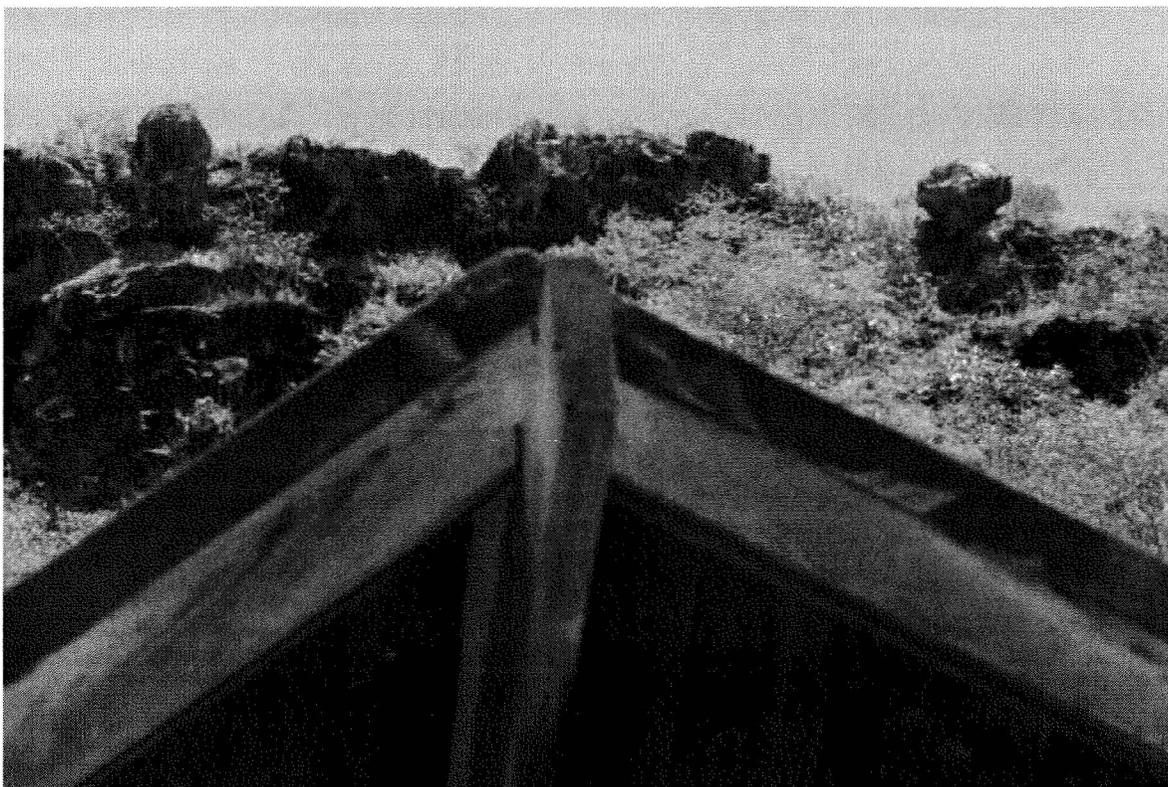
Traci Morita, whose parents' family home was struck by the boulder last week, yesterday said the family has been in talks with an insurance company, which is assessing the situation.

The back-to-back incidents illustrate O'ahu's deadly history of rockfalls, which includes the 1999 Mother's Day rockslide that left eight people dead and 50 hurt when tons of boulders crashed into the pool below Sacred Falls.

Other incidents include Thanksgiving Day 2002, when two boulders the size of garbage Dumpsters rumbled down the hillside above the Lalea condominium in Hawai'i Kai, forcing the evacuation of 26 families for 11 months.

Also in 2002 came the death of 25-year-old Dara Onishi, who was killed when a 5-ton boulder crashed into her Nu'uaniu bedroom as she slept.

To address the problem, the state is in the middle of a two-year, \$14 million plan to reduce the risk of rockslides.



Residents of the 6000 block of Haleola Street in Niu Valley confessed living with the fear that one of the large boulders precipitously sitting on the ridge will dislodge and come rolling down the hillside.

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<http://www.khon2.com/news/local/27205559.html>



### **Another Boulder Crashes Down in Niu Valley**

By Jai Cunningham

Another large rock came crashing down a hill in Niu Valley.

The latest incident in Niu Valley comes five days after a large boulder severely damaged a home.

"And it came through the trees right there, the palm trees. Twelve landed here because it didn't touch the stone wall. It landed here, probably bounced here, hit our drainage thing here. And then again hit, it probably hit against this tree where it stopped," explained Niu Valley resident Wendy Mau-Taira.

Large craters, a damaged drainage pipe, and a scarred palm tree, proof left behind by a large rock.

"Maybe about 500 pounds, but still when it's a flying missile you know it is probably more than that, we're just fortunate that nothing else was damaged."

The crater that was left by the impact of the rock is impressive. It measures just about two feet long, and it's probably about six inches deep.

Wendy and her husband have lived here for 23 years.

She says it's not uncommon for rocks to come crashing down the valley walls, but it's usually the west side that sees most of the action.

That's changed in the past week.

"We are so protected on both sides, both times, to have not sustain any major damage."

That's right just days ago Wendy's next door neighbor's house was hit.

But despite these recent close calls Wendy has no doubts about where she lives.

"Things will happen. I think we're more concerned about other things coming down, but if it's going to happen it's going to happen I think."

No one is certain how this large rock ended up here, but that's not the only mystery on Haleola Street.

"So it happened sometime on Friday probably til, yesterday, I noticed the fencing was broken it looked like something had happened. So probably sometime between thursday and the 18th."

That's right Wendy isn't exactly sure when the boulder came crashing down.

The property above the homes on Haleola Street is owned by Niu Conservative Group, which is partly owned by Jimmy Pflueger.

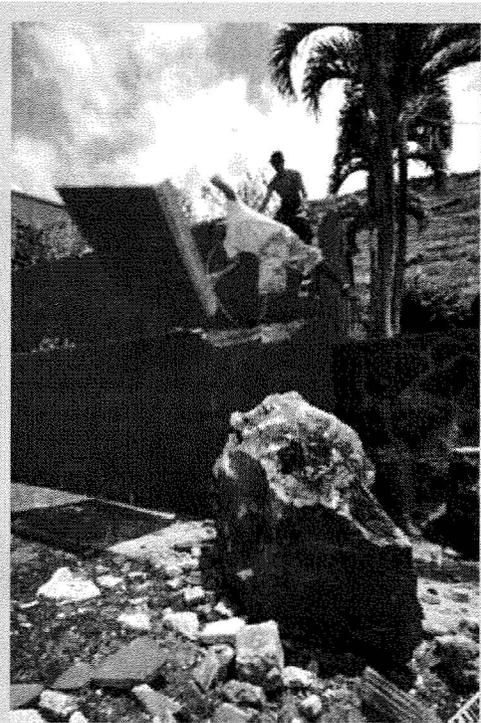
He is being sued by the families of those killed when the Kaloko Dam breeched on Kauai.

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Article URL: <http://starbulletin.com/2008/08/15/news/story05.html>  
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**Star**  **Bulletin**  
mobile edition

Vol. 13, Issue 228 - Friday, August 15, 2008



DENNIS ODA /  
[DODA@STARBULLETIN.COM](mailto:DODA@STARBULLETIN.COM)  
Ben Lew tossed a section of fence  
damaged by a boulder in Niu Valley  
yesterday as Keola Adaro looked on.

## Niu Valley residents uneasy after rockfall

**A home sustains slight damage and a fence is knocked down by the rumbling rock**

**By Gene Park and Rob Shikina**  
[gpark@starbulletin.com](mailto:gpark@starbulletin.com) and [rshikina@starbulletin.com](mailto:rshikina@starbulletin.com)

It was Noel Bragg's lucky day.



- Boulder Smashes Niu Valley Home

Residents are concerned it could happen again.

The Niu Valley resident usually parks his car on the street between his house and his neighbor's.

Yesterday, though, his car was parked elsewhere when a 4-foot boulder came crashing down, missing his house by several feet before smashing through his neighbor's fence and stopping on the curb, next to his usual parking space.

"I've already decided I'm always going to park my car on that side of the street," he said.

At about 7 a.m., Bragg, who had moved in over the weekend, was unpacking his belongings when he heard "this horrible tumbling noise, like all kinds of stuff was falling down somewhere."

He ran into his carport, thinking his stuff stacked against a wall was falling.

"I turned in time to see the boulder crash through this wall," he said. "It was like a machine gun or mortar fire. All these big chunks of rocks went flying out."

The boulder rolled down from Kulepiamoa Ridge, sideswiped a wooden home at 6041 Haleola St., crashed through a wooden fence and cinderblock wall and landed on the sidewalk.

There were no injuries, and city workers blocked off the sidewalk before removing the boulder.

The homeowner, Gary Morita, did not return calls for comment yesterday.

The fence was dislodged and hung loose for most of the morning until workers hammered it off and onto the sidewalk around noon yesterday.

City and state records indicate the land above the house is owned by Niu Conservation Group LLC, a company associated with auto dealer James Pflueger and his family. King Kamehameha I gave Niu Valley to Pflueger's ancestor Alexander Adams, a close adviser to the king.

Owen Phillips, the agent for Niu Conservation, declined to comment.

Some neighbors worried about another rock that appeared perched on the rocky ridge of the steep hill behind the homes.

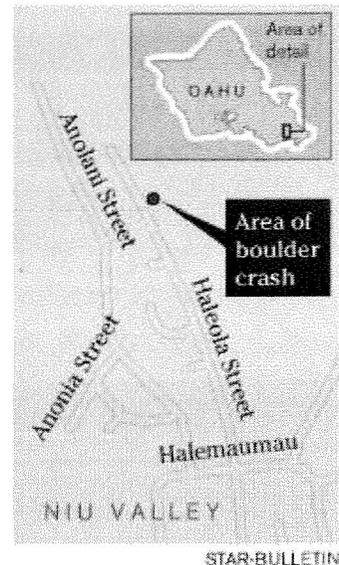
Local sports announcer Jim Leahey, who lives a few houses down, said his daughter watched the rock roll horizontally across the hillside before heading down toward the homes.

"It's like a giant Plinko game," he said, "and the tragedy is it could be lethal."

Leahey said the hill had seemed solid, but now people are worried.

"There's always that danger, I guess, and today's one of (those days)," Leahey said.

In November 1956 a 1,000-pound boulder loosened by torrential rains smashed into a Niu Valley home, stopping short of a bed on which a woman was sitting.



**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER  
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 951, RELATING  
TO LANDOWNER LIABILITY**

**March 3, 2009**

To: Chairman Jon Riki Karamatsu and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am testifying on behalf of the Hawaii Association for Justice (HAJ) formerly known as Consumer Lawyers of Hawaii in opposition to H.B. No. 951.

The purpose of this bill is to provide all public and private landowners with absolute immunity from any injury to person or property caused by any land failure on unimproved land if a natural condition causes the "land failure".

The preamble to the substantive provisions of the bill states that public and private landowners lack sufficient resources to protect society against every risk and to provide compensation for every injury caused by natural hazards. Public and private landowners are liable only when they have a duty to any third person who may be injured. That duty is to follow a standard of care that a reasonable person must use under the circumstances to prevent harm to others. This is the essence of the concept of negligence in tort law. In other words, the public and private landowner must not act in a negligent manner. There is no legal obligation that a landowner protects against every risk or be liable for every injury.

A major flaw with this bill is that gives immunity for conditions that can and should be remedied to avoid reasonably preventable injury or death to innocent citizens.

HAJ has always maintained that proponents of an immunity bill should at least provide the legislature with the data that clearly indicates the number and type of lawsuits

that have been filed against public and private landowners of unimproved lands for personal injuries or property damage that have occurred on such unimproved land due to natural conditions, any resulting judgment against the landowner, and the circumstances under which the landowner was found to be negligent. The state already has substantial protection from liability in connection with natural conditions on unimproved lands under Act 82. We have always maintained that the legislature should have all of the facts and data before a major shift in public policy is made. This bill is not in the public interest and would be creating bad public policy.

Thank you for the opportunity to testify on this bill. HAJ respectfully requests that this bill be held in committee.



HB 951

**RELATING TO LANDOWNER LIABILITY**

**House Committee on Judiciary**

Date: March 3, 2009  
Room: 325

Time: 2:00 pm

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Aloha Chair Karamatsu, Vice Chair Ito and Members. The Office of Hawaiian Affairs (OHA) **SUPPORTS THE INTENT OF House Bill 951.**

The bill intends to codify the common law regarding the liability of owners of unimproved lands for personal or property damage that occurs outside the land owner's property boundary and that occurs due to naturally occurring events on the unimproved land.

Mahalo for this opportunity to testify.



VIA Capitol Website

March 3, 2009

**House Committee on Judiciary  
Hearing Date: Tuesday, March 3, 2009, 2:00 p.m. in CR 325**

**Testimony in Support of HB 951. Relating to Landowner Liability  
(Relieves landowner of liability caused by natural conditions)**

Honorable Chair Jon Riki Karamatsu, Vice Chair Ken Ito and Members of the  
House Committee on Judiciary:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), 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 Hawai'i's significant natural and cultural resources and public health and safety.

We appreciate the opportunity to provide our testimony **in support of H.B. No. 951.**

**HB 951.** The purpose of this bill is to codify the common law that currently exists in Hawaii with respect to the legal duties and obligations pertaining to damages and injuries caused by natural conditions to property and persons outside the land. HB 951 proposes to amend Chapter 663 HRS by adding a new part which provides that landowners of unimproved land shall not be liable for any damage, injury, or harm to persons or properties outside the boundaries of their land, caused by any naturally occurring land failure originating on the unimproved land. Unimproved land is defined as "any land upon which there is no improvement, construction of any structure, building, facility, or alteration of the land by grading, dredging, or mining that would cause a permanent change in the land area on which it occurs and that would change the basic natural conditions that exist of the land."

This bill would also allow the landowners the limited reasonable use of their natural lands, without losing this protection. The bill defines "natural condition of land," as including the following: minor improvements such as the installation of maintenance or

utility poles and signage; or minor alterations undertaken for the preservation or prudent management of the unimproved land, such as the installation or maintenance of fences, trails or pathways; or maintenance activities, such as forest plantings and weed, brush, rock, boulder or tree removal; or the removal or securing of rocks or boulders undertaken to reduce the risk to downslope properties.

**LURF's Position.** LURF **supports** HB 951, which is intended to provide a level of protection to landowners from “acts of god” events. It would provide some legal certainty with respect to the legal duties and obligations of landowners arising from the inherent risks of land failures caused by natural conditions on unimproved lands, where the landowner has not created or increased the risk of harm by artificial improvements or alterations to the land.

Based on the above, we respectfully request your **favorable consideration of HB 951.**

Thank you for the opportunity to express our **support for HB 951.**

## karamatsu3-Leanne

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 01, 2009 2:58 PM  
**To:** JUDtestimony  
**Cc:** schong566@gmail.com  
**Subject:** Testimony for HB951 on 3/3/2009 2:00:00 PM

Testimony for JUD 3/3/2009 2:00:00 PM HB951

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Susan Chong  
Organization: Individual  
Address: 566 Halemaumau Honolulu, HI  
Phone: (808) 373-4322  
E-mail: [schong566@gmail.com](mailto:schong566@gmail.com)  
Submitted on: 3/1/2009

Comments:  
I oppose HB #951

## karamatsu3-Leanne

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 01, 2009 4:26 PM  
**To:** JUDtestimony  
**Cc:** changn005@hawaii.rr.com  
**Subject:** Testimony for HB951 on 3/3/2009 2:00:00 PM

Testimony for JUD 3/3/2009 2:00:00 PM HB951

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Nelson Chang  
Organization: Individual  
Address: 142 Hawaii Loa St. Honolulu, Hi  
Phone: 3731510  
E-mail: [changn005@hawaii.rr.com](mailto:changn005@hawaii.rr.com)  
Submitted on: 3/1/2009

Comments:

**karamatsu3-Leanne**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 02, 2009 12:50 AM  
**To:** JUDtestimony  
**Cc:** rcshanklin@hotmail.com  
**Subject:** Testimony for HB951 on 3/3/2009 2:00:00 PM

Testimony for JUD 3/3/2009 2:00:00 PM HB951

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Roland Shanklin  
Organization: Individual  
Address: 295 Panio St. honolulu, HI  
Phone: 255-9911  
E-mail: [rcshanklin@hotmail.com](mailto:rcshanklin@hotmail.com)  
Submitted on: 3/2/2009

Comments:  
I oppose HB951

## karamatsu3-Leanne

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 02, 2009 7:05 AM  
**To:** JUDtestimony  
**Cc:** sharps-solutions@hawaii.rr.com  
**Subject:** Testimony for HB951 on 3/3/2009 2:00:00 PM  
**Attachments:** HB951.doc

Testimony for JUD 3/3/2009 2:00:00 PM HB951

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Philip Sharp Sr.  
Organization: Individual  
Address: 282 Mahimahi Pl Honolulu HI 96821  
Phone: 373-3998  
E-mail: [sharps-solutions@hawaii.rr.com](mailto:sharps-solutions@hawaii.rr.com)  
Submitted on: 3/2/2009

Comments:

Unfortunately, it takes the power of law and the fines that come with it for many to “do the right thing” in Hawaii. The right thing, in this case, is for land owners to step up to the plate and remove hazardous boulders or other items on their property that jeopardize the health and wellbeing of others.

However, this being said, there is also a responsibility placed on the Department of Planning and Permits NOT to grant permits to developers that place the homes and other structures they are building in harm’s way. THEY should also bear an equal or greater burden for making their projects safe by meeting with land holders whose property is placed in this situation. A boulder on a piece of undeveloped land, for example, is not a threat to anyone or anything until someone erects a structure in its downward path. The onus or responsibility for its removal, therefore, should not rest with the landowner so much as it should rest with the developer.

Phil Sharp Sr.

**karamatsu3-Leanne**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 02, 2009 8:23 AM  
**To:** JUDtestimony  
**Cc:** nadine@owenohana.com  
**Subject:** Testimony for HB951 on 3/3/2009 2:00:00 PM

Testimony for JUD 3/3/2009 2:00:00 PM HB951

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Nadine Owen  
Organization: Individual  
Address: 5907 Haleola Street Honolulu, HI  
Phone: 808-373-7199  
E-mail: [nadine@owenohana.com](mailto:nadine@owenohana.com)  
Submitted on: 3/2/2009

Comments:

**karamatsu3-Leanne**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 02, 2009 8:39 AM  
**To:** JUDtestimony  
**Cc:** shiromas@hawaiiintel.net  
**Subject:** Testimony for HB951 on 3/3/2009 2:00:00 PM

Testimony for JUD 3/3/2009 2:00:00 PM HB951

Conference room: 325  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Vivian and Paul Shiroma  
Organization: Individual  
Address: 302 Anonia Street Honolulu, Hawaii  
Phone: 808-373-1028  
E-mail: [shiromas@hawaiiintel.net](mailto:shiromas@hawaiiintel.net)  
Submitted on: 3/2/2009

Comments:  
We oppose HB951.