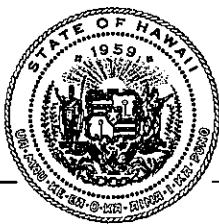


HB1808

HD3 SD1



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

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Statement of
ABBEY SETH MAYER
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Friday, March 23, 2010
9:30 AM
State Capitol, Conference Room 016

in consideration of
HB 1808 HD3 SD1
RELATING TO COASTAL AREAS.

Chair Taniguchi, Vice Chair Takamine, and Members of the Committee on Judiciary and Government Operations.

We support HB1808 HD3 SD1 Relating to Coastal Areas, with amendments. We support the bill because it provides clarification to the definition of "shoreline" by reserving as much of the shore as possible.

The revised definition of shoreline clarifies the edge of natural vegetation growth. However, there is no language in HB 1808 HD3 SD1 to deal with human-induced vegetation growth which obstructs lateral access along the shoreline. As a result, the intent of the original bill is weakened.

We recommend amending HB 1808 HD3 SD1 by reinstating the language in HB 1808 HD3. This language amends Ch. 115, HRS to authorize the Department of Land and Natural Resources (DLNR) to issue a violation citation to landowners who fail to maintain public beach transit corridors abutting or adjoining their property. The term "transit areas and public transit corridors" in the Sections 2 and 3 of HB 1808 HD3 should be replaced with the words "beach transit corridors".

Thank you for the opportunity to testify.

Lucinda & John Pyles
Honolulu, HI
808-732-6262

March 22, 2010

Senator Brian T. Taniguchi , Chair
Judiciary and Government Operations Committee

Dear Senator Taniguchi and Committee Members,

Subject: HB1808 Relating to Coastal Areas, Testimony in SUPPORT of restoration of version HD3, passed by the House of Representatives, 2010 session.

PLEASE RESTORE HB1808, HD3 as passed by the House of Representatives.

After many years of community effort to find a way to protect and preserve Hawaii's shoreline for the benefit of the people of Hawaii, both now and in the future, from landowners who have artificially cultivated vegetation causing its migration onto the beach, it is incredibly disappointing that WTL and TIA literally gutted HB1808. What is the point of having shoreline protection policies and objectives, statutory guarantees of public rights pertaining to access and use of conservation district, public domain and a legal definition of the public domain when shoreline property owners can, without any deterrent, blanket the beach with vegetation, obstructing lateral transit along the shoreline, inhibiting recreational use, endangering public safety and interfering with natural beach processes. HB1808 HD3 has been supported by the Kailua-Lanikai, Hawaii-Kai, Kuliouou-Kalani and Waialae-Kahala Neighborhood Boards and many other organizations, government agencies and individuals. Our testimony, submitted to WTL and TIA is as follows.

My husband and I have been residents of the Waialae-Kahala area for nearly forty years. We raised three sons who spent many hours enjoying East Oahu beaches. Over the past two decades we have watched the public's accessibility to beaches shrink, even beaches that are accreting (documented by the UH Sea Grant Program). Most of the shrinkage to Kahala's beach has occurred slowly over two decades due to the overgrowth of vegetation, planted and irrigated along the shoreline by adjacent landowners. The salt-water tolerant naupaka and hau has slowly migrated seaward shrinking the beach to the point that in some areas lateral access and use are obstructed even at moderate to low tides. This is not unique to Kahala. Throughout the islands the public is now denied the use and enjoyment of thousands of square feet of beach smothered in dense vegetation. In addition, the dense overgrowth creates a form of armament, interfering with natural beach processes, exacerbating erosion.

For several years I served on the Waialae-Kahala Neighborhood Board. In 2004, after receiving numerous complaints from the community, the neighborhood board met with community members, elected representatives, and City and County of Honolulu Department of Planning and Permitting (City) personnel, DBEDT, Office of Planning and CZM and DLNR/OCCL personnel.

HB1808 HD3 is the result of many collaborative meetings, beach inspection tours and coastal law investigation.

Since Hawaii State law clearly defines the shoreline, the public domain and protects the public's right to access shorelines, as well as ensuring use of the beach as public trust lands, a mechanism is needed for the Department of Land and Natural Resources, charged with regulating use within the conservation district, i.e. public domain, to effectively restore and preserve access to and use of beaches.

There are no planned increased staffing requirements associated with this bill. It is our understanding that the DLNR's Office of Conservation and Coastal Lands, responsible for coastal regulation and protection, would be responding on a complaint basis as they do now for most shoreline issues under their jurisdiction. In recent years DLNR/OCCL has been responding to overgrowth complaints on several islands but they lack a specific and effective mechanism to enforce coastal protection policies and objectives when it comes to induced vegetative overgrowth seaward of the shoreline. HB1808 provides the mechanism, allows the DLNR to charge fines and, if necessary, remove vegetation and charge the landowner.

By not addressing this growing trend, it will not go away. If not controlled now, it will demand increased attention due to inhibited access and beach loss. Property owners who claim vegetation seaward of the shoreline deters erosion are either using this argument as an excuse or misinformed. Published research (UH Sea Grant, NOAA) declares that a healthy, active beach and dune system that migrates with the shoreline is the most effective natural barrier for coastal hazards. UH SOEST shoreline studies show the range that Hawaii's beaches have historically migrated landward and seaward over the past 80 years. **A healthy beach system has plants behind the dune, not in the wash of the waves. Unnatural vegetation, which is induced or allowed to grow too far seaward, can lead to beach loss, unnatural steeping of beach faces, interruption of sediment transport, and reduced recovery capacity after large wave events.** Altered and narrowed beach and dune systems provide less effective hazard defenses because they do not have the range or sediment needed to rapidly respond to changes in near shore wave activity. Property owners who disregard historic beach migrations and artificially hardened or fix the shoreline with dense induced vegetation should not be allowed to do so at the expense of public access or environmental stewardship.

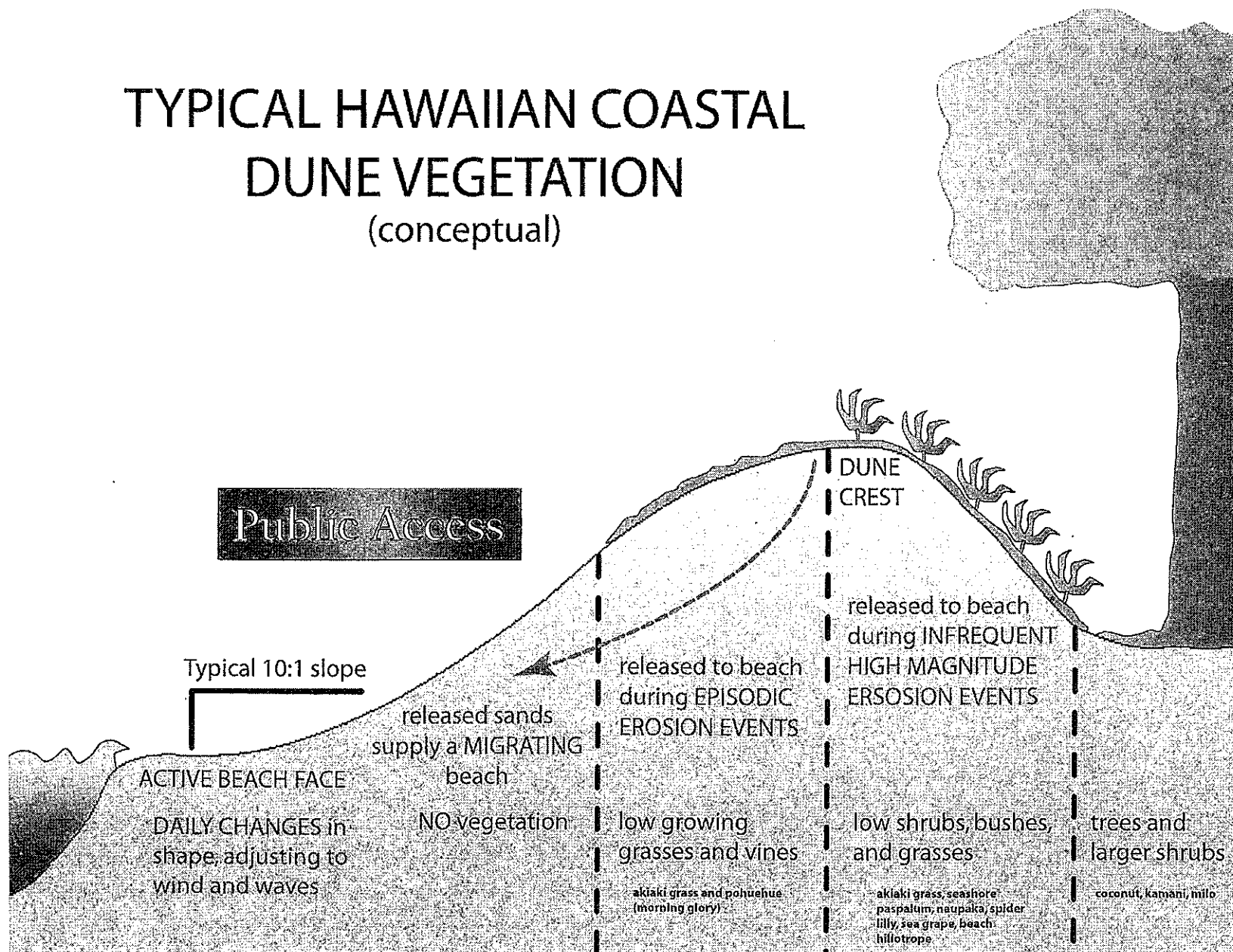
DLNR needs the power to enforce coastal preservation, the ability to recoup some cost of doing so and a strong deterrent. We urge you to support House Bill HB1808 HD3.

Yours truly,
Lucinda and John Pyles

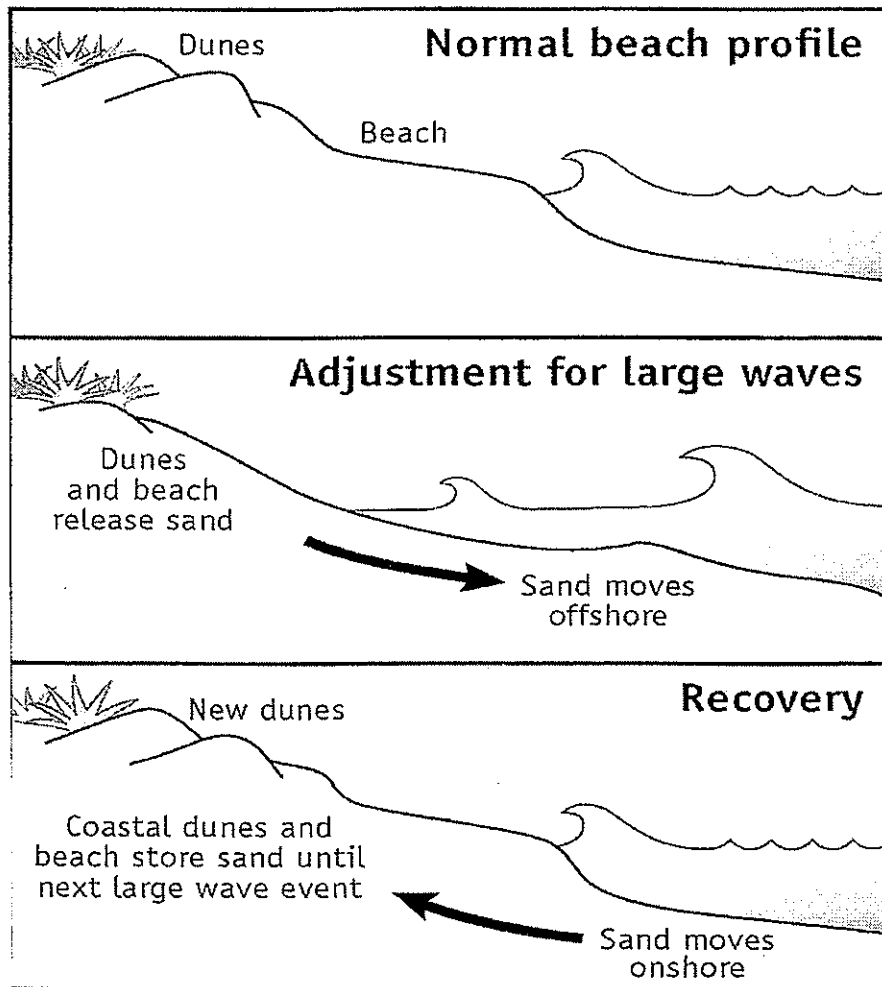
Enclosures

- o *Typical Hawaiian Coastal Dune and Vegetation* graphic, provided by DLNR/OCCL
- o *Dynamic Beach Profile* graphic, Hawaii Coastal Hazard Mitigation Guidebook, Fig 1-1 (NOAA, UH Sea Grant, CZM Hawaii, DLNR publication)
- o 4 pages of photographs documenting induced vegetative overgrowth seaward of the shoreline.

TYPICAL HAWAIIAN COASTAL DUNE VEGETATION (conceptual)

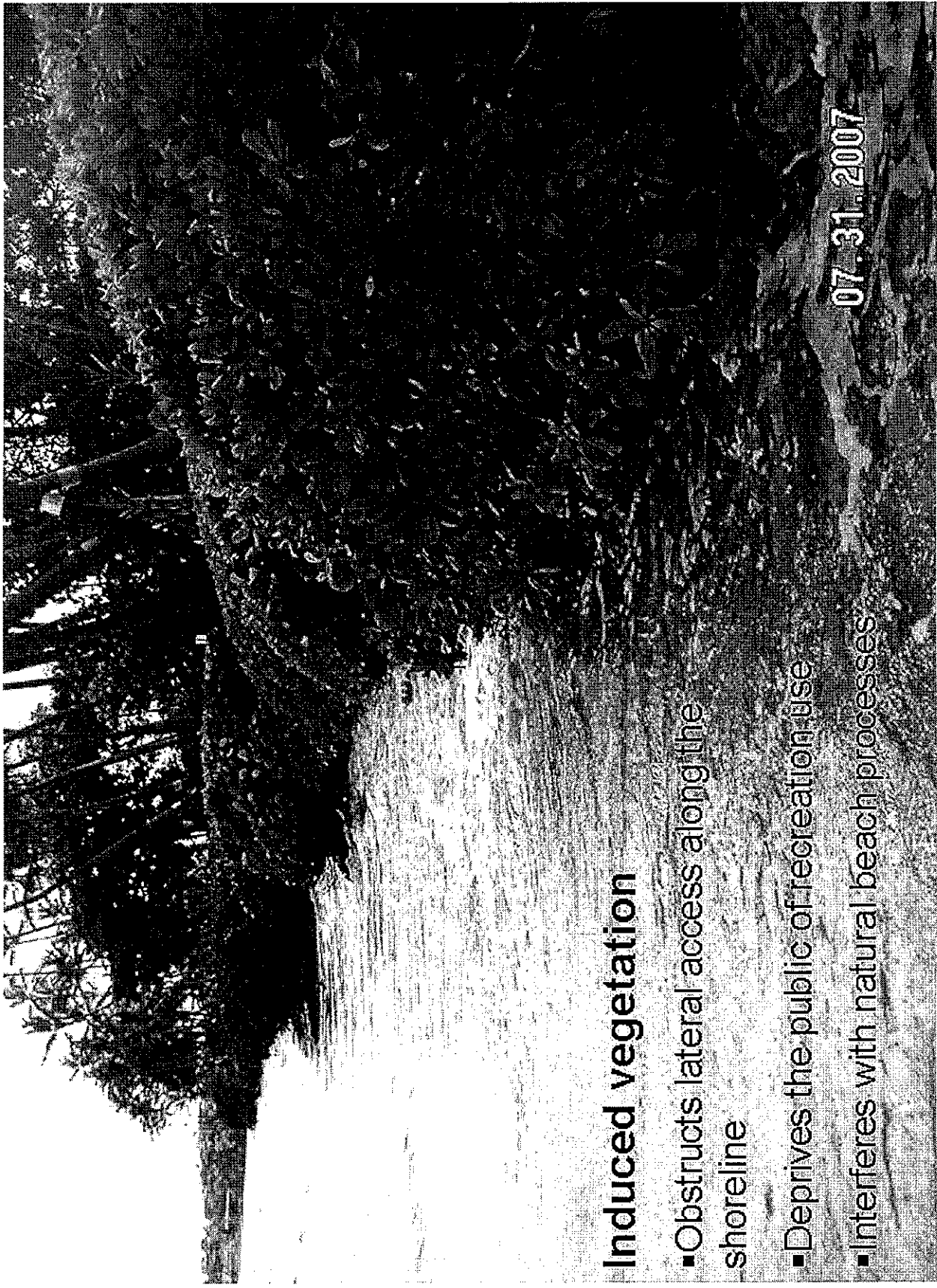


The Dynamic Beach Profile



Large waves, which tend to occur seasonally in Hawaii, cause a beach to temporarily change its profile.

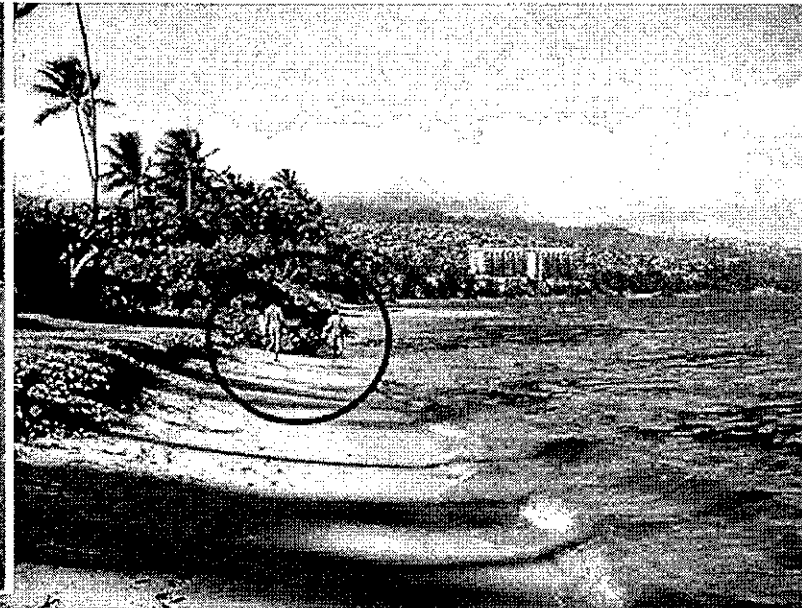
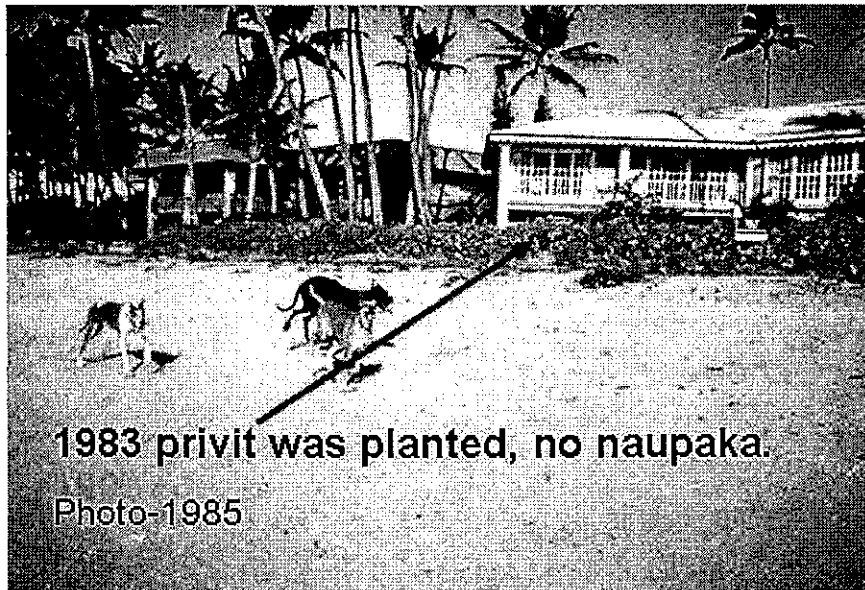
Figure 1-1 – The Dynamic Beach Profile - Wave action grinds up the skeletons of marine organisms to create the white sand on Hawaiian beaches. The dunes are made from sand that is washed or blown inland. During periods of high wave action, sand from erosion of the dunes and from the beach is transported offshore. This raises the seafloor and flattens the beach profile. Waves then shoal and break farther offshore, minimizing their erosive effects. Beaches recover when smaller waves move the sand back onto the beach and winds blow it into the dunes to be captured by coastal vegetation. From Fletcher, SOEST, UH.



Induced vegetation

- Obstructs lateral access along the shoreline
- Deprives the public of recreation use
- Interferes with natural beach processes

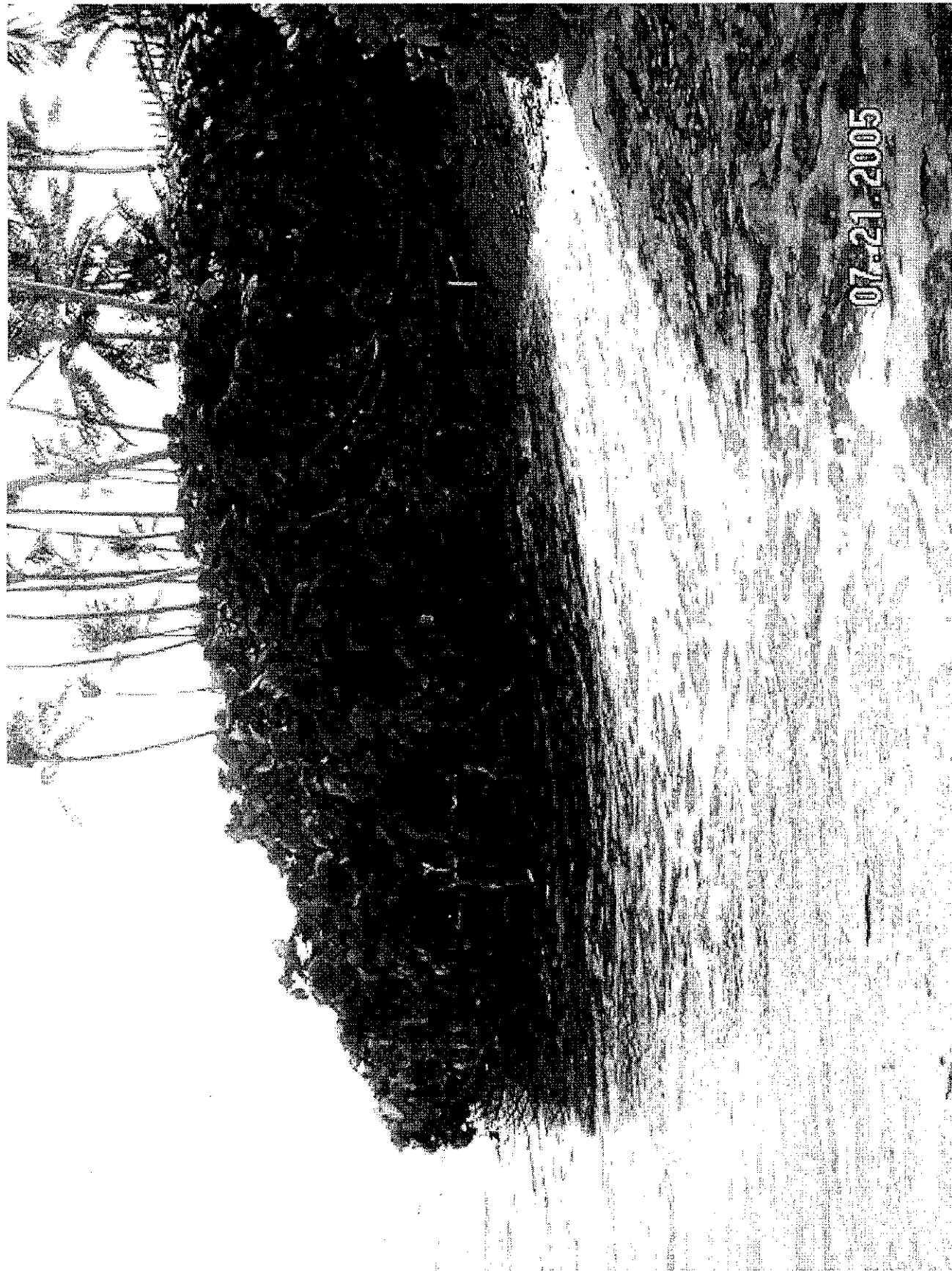
07.31.2007



**Today induced naupaka & hau plants
extend makai of privit 20 feet or more.**







From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 22, 2010 12:12 AM
To: JGO Testimony
Cc: taylorn005@hawaii.rr.com
Subject: Testimony for HB1808 on 3/23/2010 9:30:00 AM

Testimony for JGO 3/23/2010 9:30:00 AM HB1808

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Nancy Taylor
Organization: Individual
Address: 46-429 Hololio Street Kaneohe, HI
Phone: 808 2351736
E-mail: taylorn005@hawaii.rr.com
Submitted on: 3/22/2010

Comments:

The House version (HD3) of this bill would be far more beneficial to our State than the amended bill as it now stands. Our beautiful shorelines are in jeopardy of disappearing completely. I urge you to go yourself, walk our beaches, talk to people who have watched and depaired at what is actually happening. The beauty of our lovely island is what is at issue here. I have watched Kailua beach disappear before my eyes. Where I used to be able to walk 365 days a year, I now am able to manage a few days when the tide is very low. The rest of the time, the erosion of the sand caused by vegetation and sea walls, makes walking the beach almost impossible. What a shame.

Thank you for your consideration of my thoughts.

From: kahalabob@aol.com
Sent: Monday, March 22, 2010 9:48 AM
To: JGO Testimony
Cc: morita2-Joshua; Rep. Barbara Marumoto
Subject: HB1808 SD1, amendment requested at March 23rd JGO Notice of Decision

Lucinda and John Pyles
Honolulu, HI 96816
808-732-6262

March 22, 2010

Senator Brian T. Taniguchi , Chair
Judiciary and Government Operations Committee

Dear Senator Taniguchi and Committee Members,

Subject: HB1808 Relating to Coastal Areas,
Request that JGO amend SD1 restoring the HD3 version passed by the House of Representatives.

After many years of community effort to find a way to protect and preserve Hawaii's shoreline for the benefit of the people of Hawaii, both now and in the future, from landowners who have artificially cultivated vegetation causing its migration onto the beach, it is incredibly disappointing that WTL and TIA literally gutted HB1808. What is the point of having shoreline protection policies and objectives, statutory guarantees of public rights pertaining to access and use of conservation district, public domain and a legal definition of the public domain when shoreline property owners can, without any deterrent, blanket the beach with vegetation, obstructing lateral transit along the shoreline, inhibiting recreational use, endangering public safety and interfering with natural beach processes. HB1808 HD3 has been supported by the Kailua-Lanikai, Hawaii-Kai, Kuliouou-Kalani and Waialae-Kahala Neighborhood Boards and many other organizations, government agencies and individuals. There is no point in SD1. It accomplishes nothing. Please restore this very important legislation.

Our testimony was submitted via the capitol web site for the March 12th joint WTL and TIA hearing. However, only our enclosure of pictures have been posted as testimony even though the confirmation email and followup with the WTL testimony receiving office have both confirmed our testimony letter was recieved. In addition, the Waialae-Kahala Neighborhood Board chair submitted the Board's resolution in support of HD3, but this too did not show up as testimony. I also believe the Kailua-Lanikai Neighborhood submitted their resolution in support which also is not showing up as testimony. Please do review these as years of effort have gone into addressing this issue.

Yours truly,
Lucinda and John Pyles

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 22, 2010 10:11 AM
To: JGO Testimony
Cc: ckageno@hotmail.com
Subject: Testimony for HB1808 on 3/23/2010 9:30:00 AM

Testimony for JGO 3/23/2010 9:30:00 AM HB1808

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Charleen Kageno
Organization: Individual
Address:
Phone:
E-mail: ckageno@hotmail.com
Submitted on: 3/22/2010

Comments:

Please support HB 1808 that protects shoreline access to the public. There are many beachfront homeowners who are "policing" the public areas beyond their property, telling beachgoers to stay off the naupaka/plants under the guise of "environmental/green" reasons. Yesterday, my daughter and her friends were at Lanikai Beach, and a woman came up and "told" them to stay away from the plants. They respectfully kept their distance... but, the lady did return again to check on them. At that point, my daughter's friend said with her hands up ... "hey, we're not touching the plants!" The lady stared ... and walked away. So, should the public be harassed in this way? Is the green for the environment or is the green for the homeowner's pocket? Please support HB 1808 to protect the public from the greed of the few. Thank you!

I own a beachfront property on Kauai that has been in my family since the 1860s. The edge between the sand and our lawn used to only be grass. We have no erosion problem as the near-shore reef is actually causing accretion. In recent decades naupaka has started growing in one spot all by itself. Initially, we didn't do anything as it didn't appear to hurt anything. No watering or fertilizing. It never prevented any lateral access. But in the past few years, it has started growing down the sand towards the water. It has also been growing taller which I don't like as it impedes our view of the ocean. On two occasions I've brought in heavy mowing equipment pulled by tractors to cut the now 2" thick woody stems to the ground to keep it under control. What I'm concerned with is a new law that would lump me into a group of disingenuous folks and that I'll get fined for something I didn't cause or encourage. Will I get unfairly fined by the wording of this law as it is carried out by bureaucrats who say, "Sorry, it's the law"? Can the State can use some of that fine money to dig out my naupaka permanently. I hate the stuff.

Respectfully,

Philip Keat

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 22, 2010 11:34 AM
To: JGO Testimony
Cc: rspacer@yahoo.com
Subject: Testimony for HB1808 on 3/23/2010 9:30:00 AM

Testimony for JGO 3/23/2010 9:30:00 AM HB1808

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Richard Spacer
Organization: Individual
Address:
Phone:
E-mail: rspacer@yahoo.com
Submitted on: 3/22/2010

Comments:

Dear Committee on Judiciary and Government Operation:

Please support HB 1808.

Homeowners in Hawaii realize when they purchase a home abutting the shoreline that additional responsibilities fall upon them. It is in the public interest of the People to have lateral shoreline access. It is recognition of a traditional and customary Hawaiian idea. The traditional Hawaiian concept of Ala Loa trails still exist and should be recognized on all our islands as lateral access, protected by law. The legislature has this opportunity to now do this. Please mandate lateral shoreline access for the public for all islands. Mahalo.

Richard Spacer
Beach Activist, Kauai

From: kahalabob@aol.com
Sent: Monday, March 22, 2010 1:17 PM
To: JGO Testimony; WTLTestimony; TIA Testimony; Sen. Clayton Hee; Sen. J. Kalani English; Sen. Brian Taniguchi; Sen. Jill Tokuda; Sen. Mike Gabbard; Sen. Colleen Hanabusa
Subject: HB1808, Rebuttal to Vegetation as protection from Erosion (Hon Advertiser article and Stan Johnson testimony)
Attachments: Typical Hawaiian Coastal Dune Veg.jpg; The Dynamic Beach Profile Graphic.jpg

Comments: Below I have provided a brief rebuttal to the testimony claiming that the shoreline blanketed in vegetation below the wash of the waves is protecting our beaches rather than interfering with natural beach processes. Such testimony submitted to the Senate Committees and reported in the Honolulu Advertiser regarding Kahala Beach is misleading and the claims and conclusions are erroneous. I believe this is a diversion from the real issues that HB1808 was intended to address, that being lateral access and use of our beaches, public safety and preservation and protection of natural beach processes.

1. What is described as irreversible, catastrophic "erosion" on Kahala Beach as a result of the voluntary trimming of vegetation seaward of the shoreline is really shoreline migration positioned well within the historical range of migration for Kahala Beach and existed before the voluntary trimming. The UH SOEST website, showing historical mapping of the shoreline, uses colored lines to depict the location of historic shorelines along Kahala Beach since 1927 <ftp://soest.hawaii.edu/coastal/webftp/Oahu/posters/KahalaWest72dpi.jpg>. At least twice in the past 80 years the shoreline has been well landward of its current position and often at its current position.

2. What is claimed to be irreversible, catastrophic "erosion" is actually property owners artificially fixing the shoreline rather than allowing historic natural beach processes the freedom to do what has gone on for the past 80 years, not to mention thousands of years before residential development. Some beaches in Hawaii are accreting, with a large section of Kahala Beach being among them.

3. Vegetation below the shoreline masks erosion and seriously exacerbates erosion by interfering with the natural beach processes. Recent pictures after windy period on Kahala Beach shows encroaching vegetation caused sand to be deposited in the wash of the waves which will be quickly carried away, where vegetation beyond the wash of the waves caused sand to bill up on the crest of the beach, building a dune, as protection from large episodic wave action. (See UH Sea Grant/SOEST, DLNR/OCCL, NOAA publications: Typical Hawaiian Dune Vegetation and The Dynamic Dune Profile graphics attached).

4. Debris in the near shore waters is common after unusually high tides or storm run off. This happens many times a year. The real threat to the marine eco system is not the churned up sediment from a very high tide, but rather what washes down storm drains and drainage canals and property owners who grade away dunes and dump unnatural top soils and fertilizers within the migratory range of the shoreline. The transport of large amounts of sand to the near shore ocean bottom is also common during unusually high tides and storm surf. This is actually part of how the beach protects itself. (see graphic attached) The build up of the near shore bottom during high surf serves to break the impact of high energy waves, diminishing their impact. During normal tides, the near shore sand will return to the beach. Vegetation within the wash of the waves can interfere with sediment transport and beach recovery. Pictures of any beach after a storm or high tides only shows one stage of the dynamic processes of beach profiles. To not include pictures of recovery periods is selectively misleading.

5. While naupaka may be a native plant, it does not grow in robust blankets along a shoreline unless it is induced. Even those who claim naupaka is native admit to artificially cultivating it along the shoreline. A Kahala beachfront lot that has been vacant for 25 years does not have one naupaka plant visible anywhere near its 150 foot plus shoreline. However, the existence of naupaka is not so much the issue as the location of the naupaka and the historic migration of the shoreline. Property owners can induce all the vegetation they want mauka of the shoreline if they believe it provides protection. But it seems they don't consider that an option. They prefer to consider the public domain their only alternative!

6. The report Coastal Zone Management made last year to the legislature, as mandated by HCR258, contains pictures of the beach in front of the first property to voluntarily comply with DLNR/OCCL's request for voluntary cooperation in removing vegetation seaward of the shoreline. The pictures demonstrate how rapidly sand recovery can occur after an extreme high tide or storm. Pictures submitted in testimony opposing HB1808, labeled "irreversible, "catastrophic" "erosion" were not the whole story, but selective and misleading. What if the vegetation in the wash of the waves has exacerbated and masked erosive migration. What if the beach is merely doing its normal historical thing. What if what's really different is that property owners are now drawing a literal line in the sand and telling the littoral process,

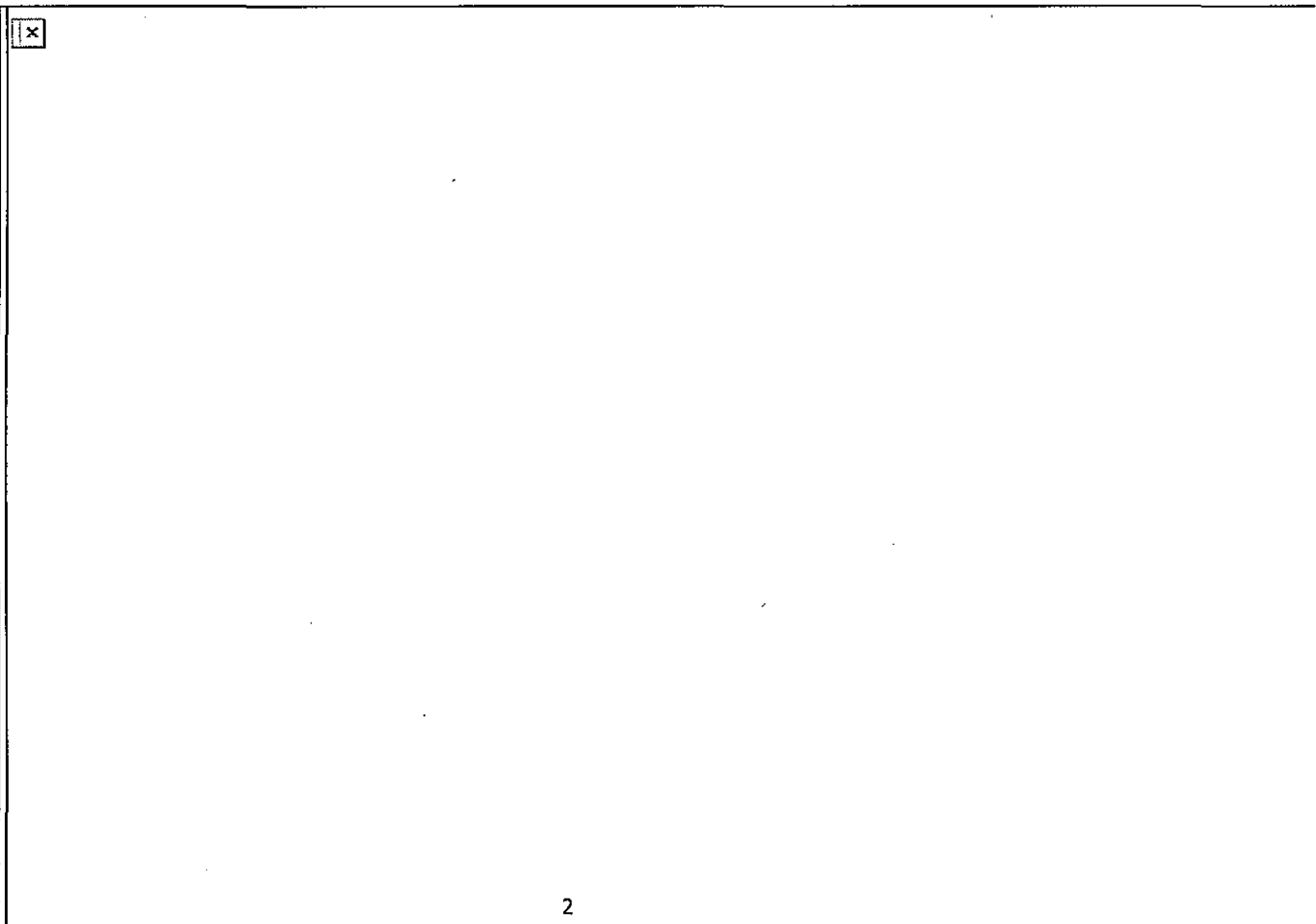
"don't you dare trespass over the line I've drawn". Maybe what's really eroded is our respect for natural processes and cultural values. Maybe what's unusual is for the first time the shoreline is fixed and interfered with!

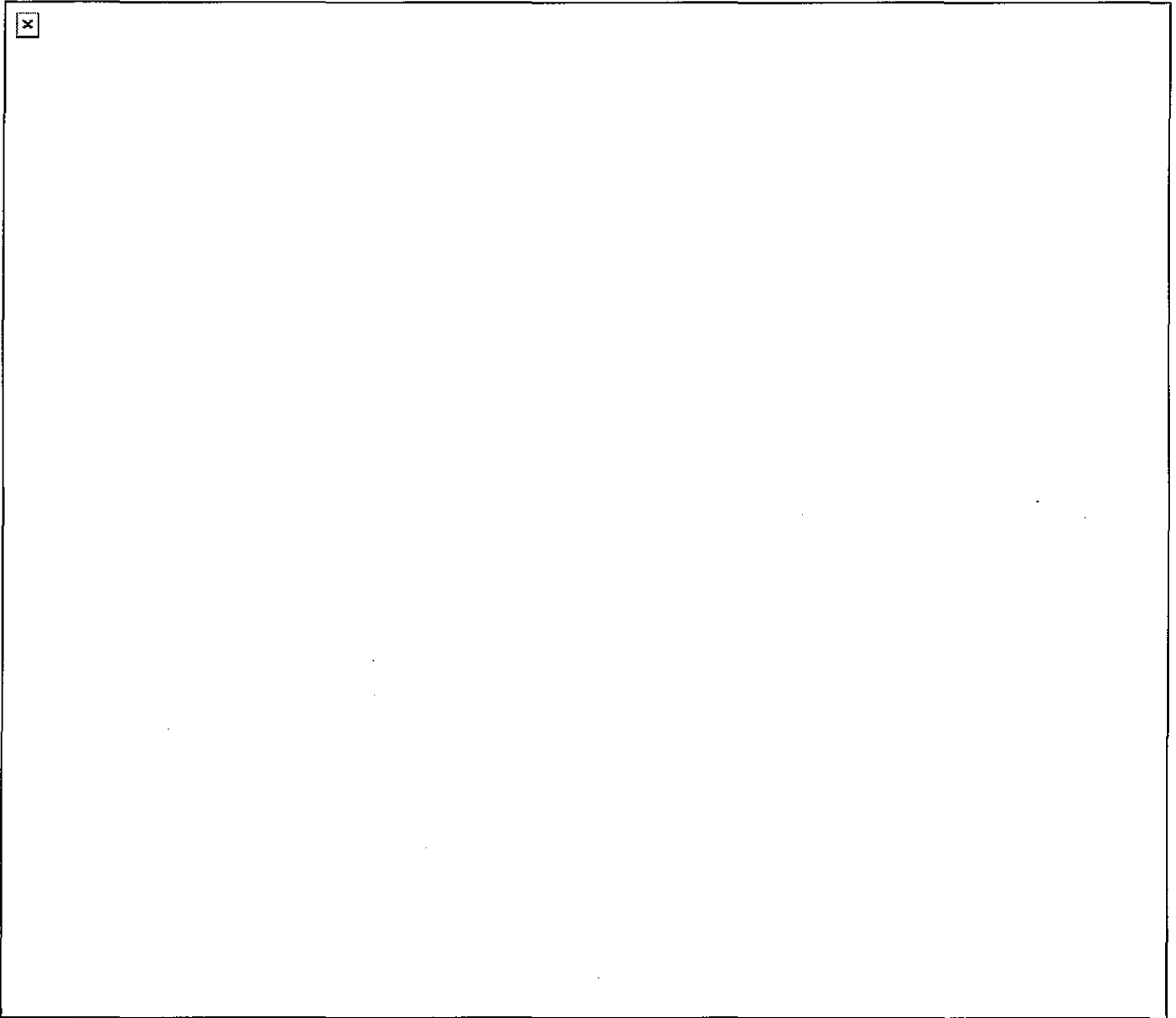
7. Beach front properties in Kahala are two to four times the size of lots in the rest of the Kahala subdivision. I suspect that is because Bishop Estate recognized they would be subject to a migrating shoreline. City and County and State law require that any development within forty feet of the shoreline must first have a shoreline certification survey in order to determine where the shoreline is at any given time. That certification is good for only one year. Both the survey and the one year limit are again in recognition that the shoreline migrates. Dwelling structures are not permitted within the forty foot shoreline setback and a revocable Shoreline Management Area permit (SMA) must be obtained in order to construct even a fence within this setback. As part of the SMA permitting processes, the property owner must sign an agreement that they will remove the structure at their own expense if it becomes in the wash of the waves; again in recognition of the natural migration of shorelines. Furthermore, it is illegal to artificially fix or harden a shoreline, again in recognition that shorelines migrate.

I don't think anyone is looking to take private property away. But many beaches are shrinking and its not all due to erosion. I want a mechanism to deter those who intentionally or unintentionally blanketing our beaches in vegetation for all but the lowest tides, robbing the public of hours and thousands of square feet of use. Hawaii culturally has always valued the beach as a public trust resource. No surprises, nothing new. Existing Hawaii laws define the public trust domain and guarantee, protect and preserve public rights in regard to the shoreline. What's new is the prevalence of a relatively new trend, which is not going away, to obstruct the shoreline with induced vegetation. HB 1808 did not create new guarantees or rights, it merely added induced to the already existing list of illegal impediments to transit along and use of the shoreline that includes fences, walls, barriers, security guards, guard dogs, etc.

I realized it is difficult to become educated on the complexities of issues, but it is unbelievably irresponsible to take at face value, erroneous assertions without investigation, to ignore the complete story in favor of misleading claims and erroneous conclusions.

Lucinda Pyles
372-9323





**Stanton Johnston
4653 Kahala Ave.
Honolulu, HI 96816**

March 22, 2010

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Senator Brian T. Taniguchi, Chair

Senator Dwight Y. Takamine, Vice Chair

DATE: Tuesday, March 23, 2010
TIME: 9:30 a.m.
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

Comments on HB 1808, HD3, SD1: Relating to Coastal Areas. Clarifies the definition of "shoreline." Effective July 1, 2050. (SD1)

Dear Honorable Chair Members Taniguchi and Takamine:

The definition of "**shoreline**" does not address erosion and unfairly takes away property from longtime owners, which raises serious constitutional questions.

As an example, please answer the following practical questions:

1. Who owns the property eroded by high tide or the upper reaches of the wash of the waves that is located inside an owner's property line?
2. Why were newly constructed seawalls built on Kahala beach?
3. Who owns these seawalls and who owns the property they are constructed on?
4. Did the State pay for any of the construction?
5. Who is responsible for maintenance, liability, erosion control and ecological damage due to construction and beach replenishment of these seawalls? (Please see photos attached.)

In every state it has been the government's responsibility, both State and Federal, to protect property owners with seawalls (New Orleans) and from various floods throughout the country, however, we know that seawalls will exacerbate erosion.

The definition of "shoreline" confuses the situation. If the State intends to take land, then it should pay for it.

Stanton Johnston

High Tide Erosion Obvious



4631 KAHALA AVENUE (2008)

Private property eroded by approx. 6ft.



4631 KAHALA AVENUE (2008)

Beach formerly at top of footing.



4631 KAHALA AVENUE (2008)



4631 KAHALA AVENUE (2010)

Photo by NORMAN SHAPIRO | The Honolulu Advertiser

Taken 3/18/10

PROOF OF CONSTANT EROSION

The Honolulu Advertiser's photo shows imported sand covering up the sandbags.

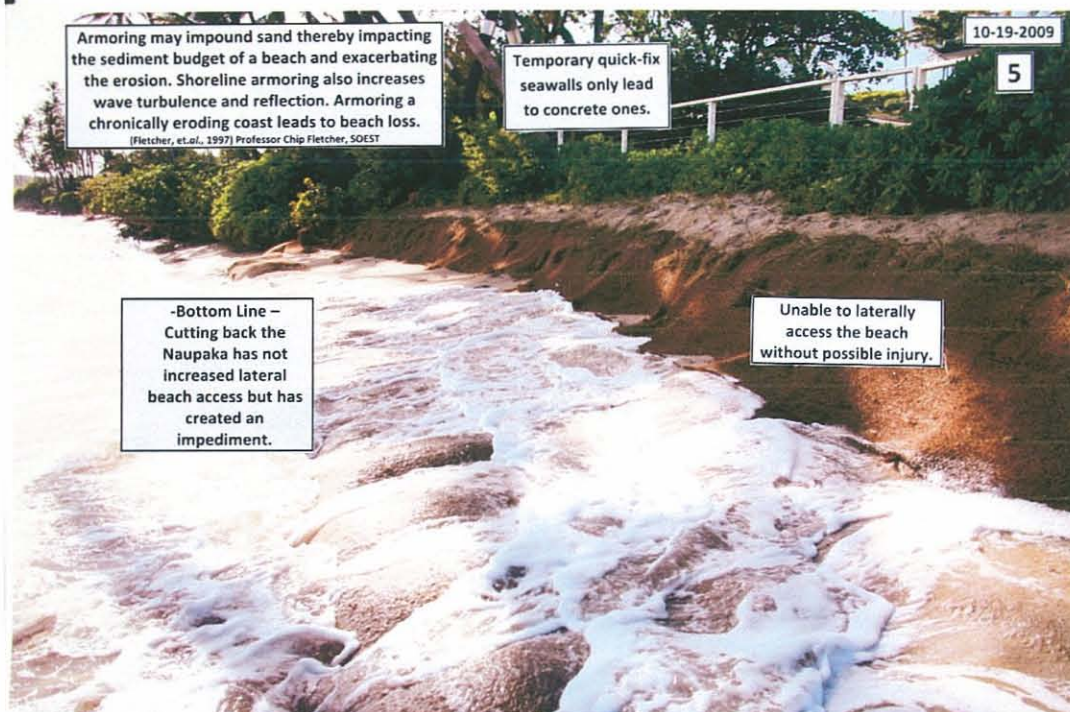


4631 KAHALA AVENUE (2010)

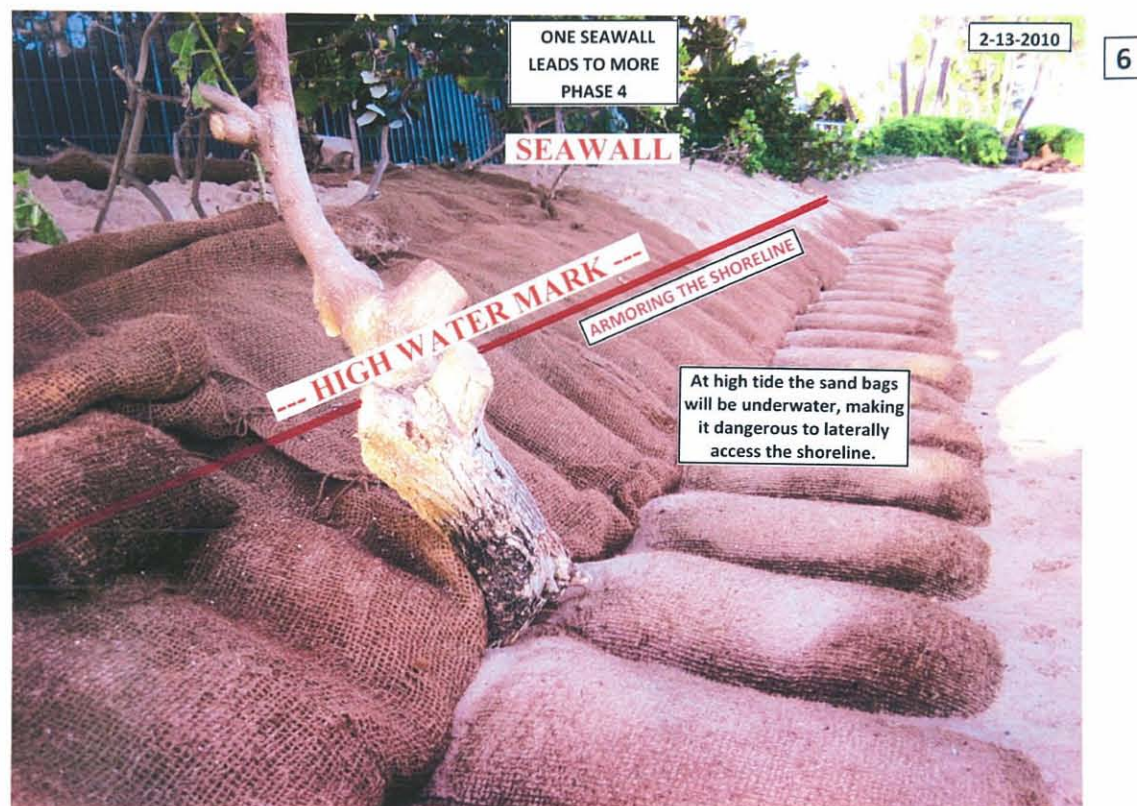
Photo by STANTON JOHNSTON

Taken 3/22/10

The high wash of the waves has now eroded past the fence into the property line.



WHO OWNS AND IS RESPONSIBLE FOR THIS LAND?

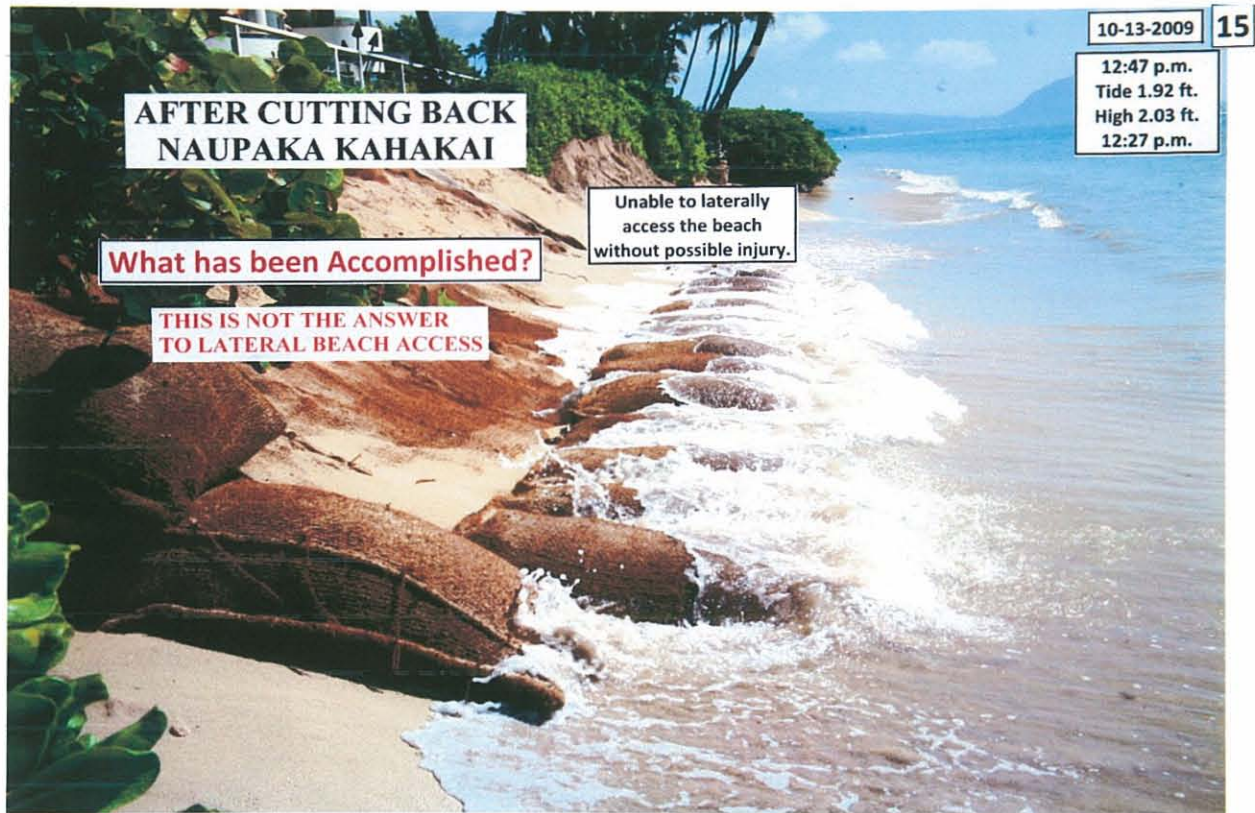




WHO OWNS AND IS RESPONSIBLE FOR THIS LAND?
4615 KAHALA AVENUE

Was safe shoreline access achieved to ensure public transit of beach corridors with the cutting back of native vegetation? The Naupaka Kahakai is gone and has been replaced by seawalls! Beach access was not achieved, but obstructed at high tide.

Who is responsible for maintenance, liability, erosion control and ecological damage due to construction and beach replenishment of these seawalls?



FOR MORE DOCUMENTED BEACH EROSION EVIDENCE AND INFORMATION,
PLEASE SEE:

savekahalabeach.com

www.SCRIBD.COM/SAVEKAHALABEACH