

Via: <http://www.capitol.hawaii.gov/emailtestimony>

March 12, 2010

**Opposition and Comments to HB 1808, HD3: Relating to Coastal Areas
(Maintaining public beach access by adjacent landowners)**

**Senate Committees on Water, Land, Agriculture and Hawaiian Affairs, and
Transportation, International and Intergovernmental Affairs
Hearing Date: Friday, March 12 at 1:15 p.m. in CR 224**

Honorable Chair Clayton Hee, Vice Chair Jill Tokuda and Members of the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs, and Honorable Chair J. Kalani English, Vice Chair Mike Gabbard and Members of the Senate Committee on Transportation, International and Intergovernmental Affairs,

I am Dave Arakawa, 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 Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide testimony regarding HB 1808, HD3 which would require maintenance of public beach accesses by adjacent landowners and impose penalties for non-compliance; establishes shoreline access as an objective of the coastal zone management program; and requires the Department of Land and Natural Resources to provide written notice to property owners affected by this act.

HB 1808, HD3. The purported purpose of this bill is to ensure public access of beaches by:

- (1) Requiring landowners in shoreline areas to ensure that public transit beach corridors are passable and free from human-induced, enhanced, or unmaintained vegetation that blocks transit;
- (2) Authorizing the Department of Land and Natural Resources (DLNR) to require maintenance of public transit corridors by the adjacent landowner and to charge landowners for the cost of removal if the landowner fails to remove an obstruction;
- (3) Establishing as an indicator of the highest wash of the waves, as it relates to the definition of "shoreline", the edge of natural vegetation growth, but never lower than the upper limit of debris left by the wash of the waves;
- (4) Establishing shoreline access as a policy of the Coastal Zone Management Program; and
- (5) Imposing fines for noncompliance.

LURF's Position. LURF generally supports the intent and purpose of HB 1808, HD3 however we must respectfully **oppose** the provisions which **requires that private property owners maintain public areas belonging to the State of Hawaii; and requires that landowners pay reimbursements to the State for maintenance of state lands.**

Also, LURF respectfully requests these Committees to pay special attention to the concerns of the City and County of Honolulu's Department of Permitting and Planning who also opposes this bill for the following reasons: (1) the County does not have the resources to enforce vegetation overgrowth and (2) the county building inspectors would have difficulty proving that the vegetation overgrowth is human-induced or enhanced as they are not experts in that field.

Additionally, the 2006 Hawaii Supreme Court in Diamond v. State of Hawaii, 112 Haw, 161, 145 P.3d 704 (2006) pointed out the importance of the legislative history of §205A-1 of the Hawaii Revised Statutes which,

also supports the interpretation that the shoreline should be certified at the highest reach of the highest wash of the waves. In 1986, the legislature amended the definition of shoreline, adding the following emphasized language that is currently in the statute: "the upper reaches of the wash of the waves, other than storm or tidal waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves." 1986 Haw. Sess. L. Act 258, § 2 at 469 (added language emphasized)."

The shoreline access and maintenance issues are important issues that affect the State's coastal lands and the public's right to enjoy the shoreline. Likewise, we believe that landowners who live along the shoreline also have important property rights, and the right not to be charged fees or prosecuted by the State for responsibilities which should be performed by the State.

Understanding the importance of the shoreline issues raised by HB 1808, HD3 LURF would respectfully request that the bill be **deferred** to allow stakeholders, including, but not limited to government agencies, the public, private landowners, legal experts and other interested parties to meet and work together to come to a consensus regarding the provisions of HB 1808, HD3.

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



LATE

March 12, 2010

Hawaii Senate Committees on TIA and WTL

RE: Strong Support for House Bill 1808 HD3 – Relating to Coastal Areas

Dear Chairs English and Hee and Committee Members,

My name is Stuart H. Coleman, and I am the Hawaii Coordinator of the Surfrider Foundation, a national, environmental non-profit with four chapters and more than 4000 dues-paying members across the state. We strongly support HB1808 because beach access is one of our highest priorities and an important right for Hawaii's people.

Surfrider is part of Beach Access Hawaii, a statewide coalition of groups that is fighting for beach access. We have been working on various forms of legislation for over four years, and we are glad to see that legislative leaders have finally come up with a strong bill that has a good chance of becoming law. Many organizations and individuals in Hawai'i have shown support for this bill because the right to access the coast is crucial to our way of life and deserves substantial protection. Although obstructing public access to public property is a misdemeanor, there have been increasing cases across the state where private land owners have blocked access with the use of gates, walls, fences and vegetation.

Along with direct access to our beaches, we support the bill's protection of lateral access along the shoreline. This bill will ensure that private landowners aren't allowed to block public rights of way by strengthening existing laws about public transit corridors and allowing the Dept. of Land & Natural Resources to enforce these rules. Intentionally planting vegetation to block access deters the reasonable use of our public beaches and pathways, and it could also hinder rescue efforts to protect the safety of our residents and guests.

As an amendment, we respectfully ask that you add a private right of action to help enforce these laws. By ensuring public access to our shorelines, HB 1808 helps preserve the people's right to enjoy our beaches, one of Hawaii's greatest assets. The bill also reinforces provisions in our Coastal Zone Management plan. Mahalo for supporting this bill and finding a practical solution.

Aloha,

Stuart H. Coleman

Stuart H. Coleman
Hawaii Coordinator
Surfrider Foundation
808-942-3841

LATE

[REDACTED]
From: sollyt@yahoo.com
Sent: Friday, March 12, 2010 12:08 PM
Cc: [REDACTED]
Subject: Protect Beach Access!

Search returned no results

Tracy Solomon

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Friday, March 12, 2010 02:07 PM PST

Strong Support for
Search returned no results

Re: HB1808 WTL/TIA Public Hearing, March 12, 2010 @ 1:15pm in Room 224 Aloha members of the Water, Land, Agriculture, and Hawaiian Affairs Committee, and members of the Transportation, International and Intergovernmental Affairs Committee, I am a lifelong Big Island resident and I strongly support the forward movement of House Bill 1808 because it provides much needed protection for our sacred right to access the shoreline. I spend my workdays implementing environmental standards within my company and my weekends on the beach.

Throughout my life here I have seen too many property owners disregard "public access" laws and obstruct the walkways adjacent to their property out of selfishness. How can we blame them if we don't try to stop them? Enforcement is a necessary part of protecting public access in Hawaii. What good are laws if we have no clear method of enforcement? The oceans and beaches are for everyone and the existing community, not the new round of real estate owners who have to respect for our existing culture or community. Please push this bill forward. Mahalo for your time and consideration.

LATE

Testimony in support of HB1808 by Carol Wilcox
Friday, March 12, 2010, 1:15 p.m. Conference Room 224
Senate Committees Water, Land, Agriculture and Hawaiian Affairs
Transportation, International and Intergovernmental Affairs

Dear Chairman Hee and Chairman English and members of the Committees,

Thank you for the opportunity to testify.

The natural historic profile of Kahala beach is a gently sloping shorefront. While beach access on the southern half of the beach has been obstructed since the 1950s by encroaching seawalls (Ex1), the northern half of the beach has remained open to the public for lateral access, up to recent times.

When this was leasehold land, the shorefront was protected by Bishop Estate in a lateral parcel intended for shoreline migration and lateral access of tenants. Since then, this buffer parcel has been absorbed by the beachfront landowners. Up until recently, these landowners left the area open to natural shoreline migration.

In the late 1990s, some of them started to aggressively plant and irrigate bushy vegetation along Kahala Beach. (Ex2) They often added fill behind that vegetation to raise and level their yards, thereby destroying the natural slope and dunes of the shoreline. Sometimes they built fences and planted naupaka or hau behind and in front of them. This intentionally planted and irrigated bushy vegetation grows onto the beach, well seaward of the natural wash of the waves at high tide, thereby obstructing public lateral access. (Ex3)

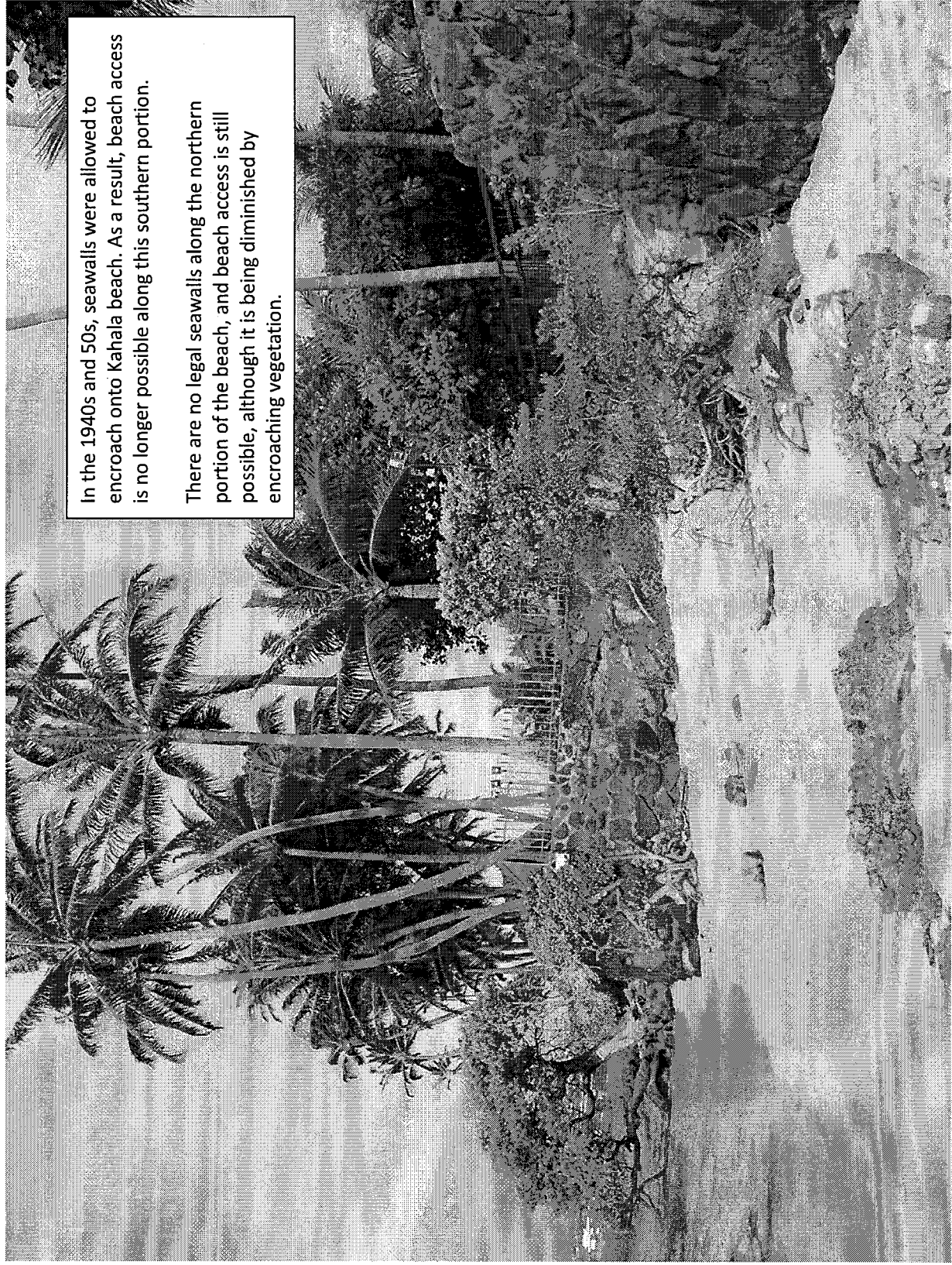
In 2005, a group of community members worked with state and county agencies to define and protect the public's rights to lateral access along the beach. They used this beach as a pilot project for dealing with a situation that is increasingly a statewide problem. Part of that process was to ask the landowners to voluntarily cut back encroaching vegetation. While some did, others did not.

As a demonstration of what is at stake here, attached are two pictures, one taken in 2007, the other taken a few days ago, of a section of Kahala beach. (Ex4) In 2007 you had to go into the water to traverse the beach. Today, the vegetation is gone because one of the landowners voluntarily cut back the hau and the other is no longer irrigating and so that vegetation has disappeared. Thousands of square feet are now once again available for public access. The historic beach is restored.

There are those who argue that this forced vegetation protects the beach from erosion. This is simply not true and there is science to support that. But that isn't even the issue here. The issue is the encroachment of bushes and trees onto the beach.

We have just two options here. One, allow this encroachment and lose the public beach or, two, support requirements that allow the shoreline to migrate naturally. As it stands now, confusion over jurisdiction of the shoreline and increased beach encroachment have created a problem that now needs attention. Hawaii state policy, law and court decisions have made clear that the State has a right and obligation to protect Hawaii's beaches as a public resource.

This bill clarifies that government has the right to maintain the lateral access along the beach and provides funding to do so. On behalf of all us who use our beaches, I urge that you strongly endorse HB1808.

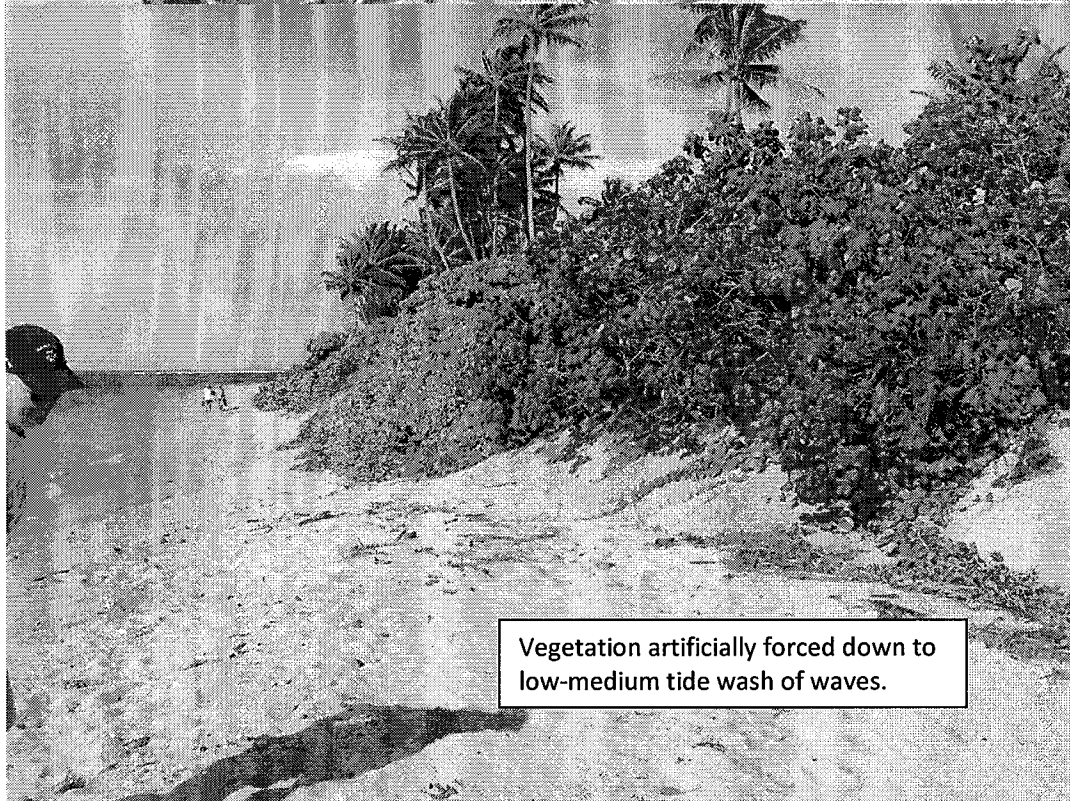


In the 1940s and 50s, seawalls were allowed to encroach onto Kahala beach. As a result, beach access is no longer possible along this southern portion.

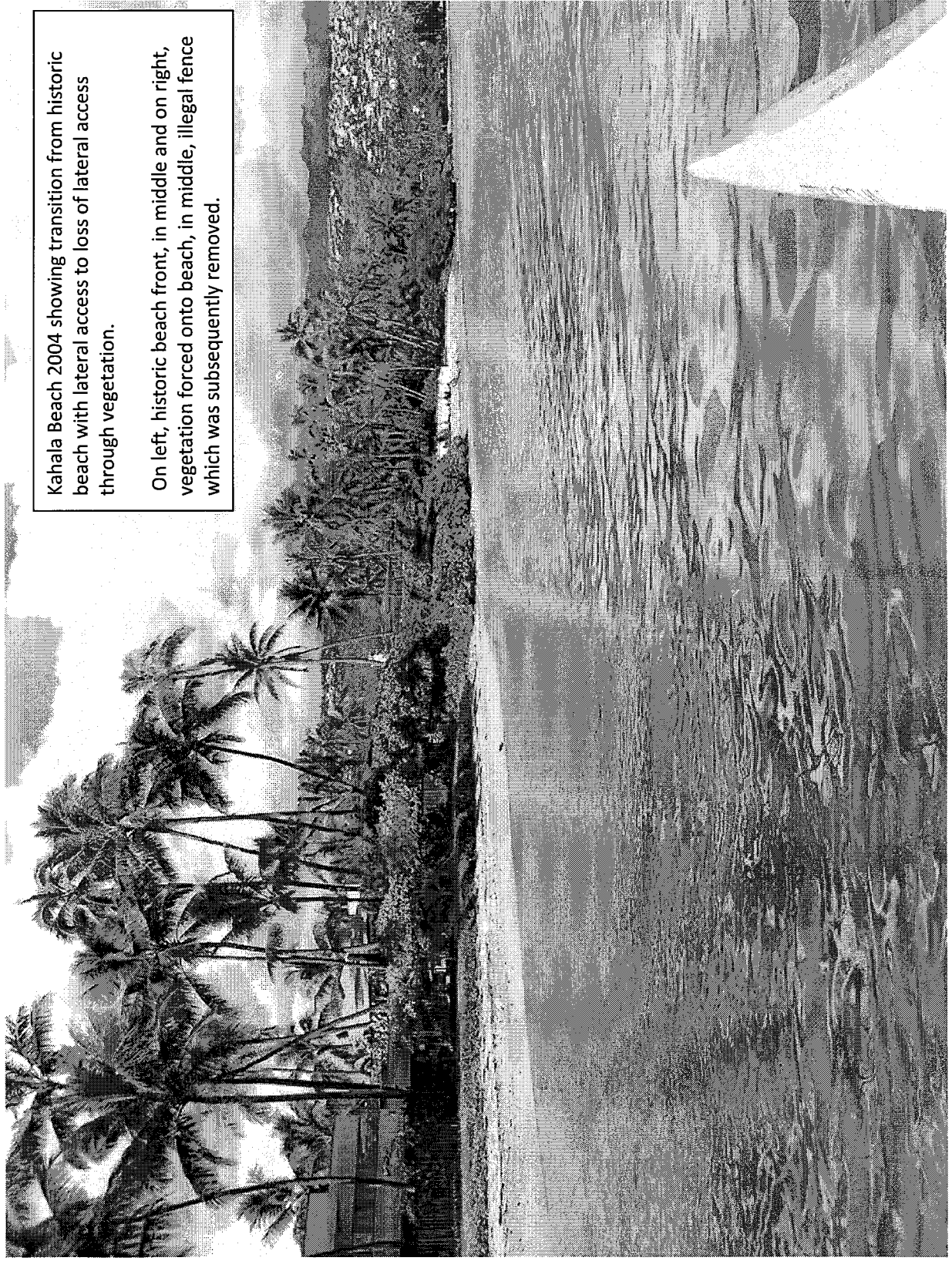
There are no legal seawalls along the northern portion of the beach, and beach access is still possible, although it is being diminished by encroaching vegetation.



Intentional planting and irrigation
onto the beach.



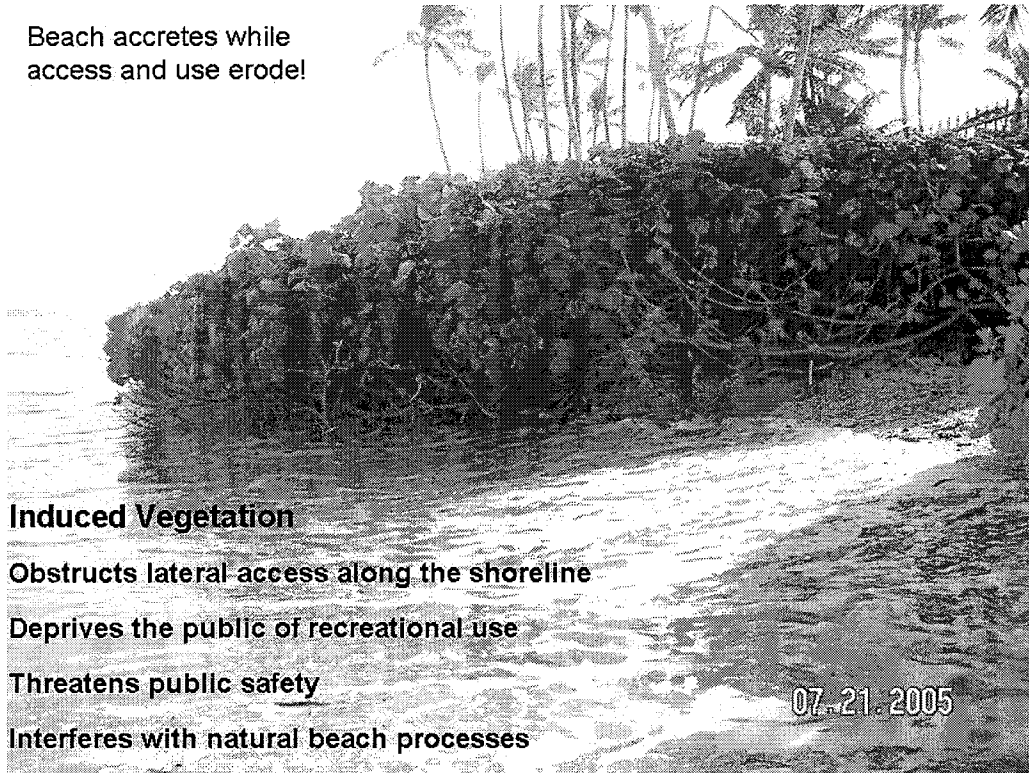
Vegetation artificially forced down to
low-medium tide wash of waves.



Kahala Beach 2004 showing transition from historic beach with lateral access to loss of lateral access through vegetation.

On left, historic beach front, in middle and on right, vegetation forced onto beach, in middle, illegal fence which was subsequently removed.

Beach accretes while
access and use erode!



Induced Vegetation

Obstructs lateral access along the shoreline

Deprives the public of recreational use

Threatens public safety

Interferes with natural beach processes



**Same beach 2010, vegetation
removed.**

LATE

From: charlieq@hawaii.rr.com
Sent: Friday, March 12, 2010 9:39 AM
Cc: WTLTestimony; TIATestimony
Subject: Protect Beach Access!

Search returned no results

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Friday, March 12, 2010 11:38 AM PST

Strong Support for
Search returned no results

Re: HB1808 WTL/TIA Public Hearing, March 12, 2010 @ 1:15pm in Room 224 Aloha members of the Water, Land, Agriculture, and Hawaiian Affairs Committee, and members of the Transportation, International and Intergovernmental Affairs Committee, I strongly support the forward movement of House Bill 1808 because it provides much needed protection for our sacred right to access the shoreline. Too many property owners disregard "public access" laws and obstruct the walkways adjacent to their property out of selfishness. How can we blame them if we don't try to stop them? Enforcement is a necessary part of protecting public access in Hawaii. What good are laws if we have no clear method of enforcement? Please push this bill forward. Mahalo for your time and consideration.

LATE

From: GLaBedzMD@aol.com
Sent: Friday, March 12, 2010 9:16 AM
Cc: WTLTestimony; TIATestimony
Subject: Protect Beach Access!

Search returned no results

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Friday, March 12, 2010 11:15 AM PST

Strong Support for
Search returned no results

Re: HB1808 WTL/TIA Public Hearing, March 12, 2010 @ 1:15pm in Room 224 Aloha members of the Water, Land, Agriculture, and Hawaiian Affairs Committee, and members of the Transportation, International and Intergovernmental Affairs Committee, I strongly support the forward movement of House Bill 1808 because it provides much needed protection for our sacred right to access the shoreline. Too many property owners disregard "public access" laws and obstruct the walkways adjacent to their property out of selfishness. How can we blame them if we don't try to stop them? Enforcement is a necessary part of protecting public access in Hawaii. What good are laws if we have no clear method of enforcement? Please push this bill forward. Mahalo for your time and consideration.