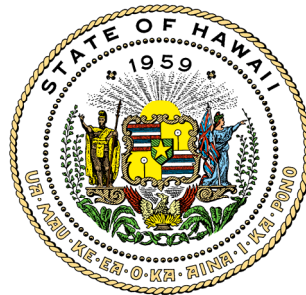


REPORT TO THE HAWAII STATE LEGISLATURE

IN RESPONSE TO

HCR NO. 258

Requesting the Office of State Planning to Coordinate the City and State Agencies in Addressing the Overgrowth of Vegetation on Kahala Beach



**Office of Planning
Department of Business, Economic Development & Tourism
State of Hawaii
2008**

SUMMARY

There have been numerous community complaints that human-induced vegetation is blocking public access and use of Kahala Beach. Kahala Beach is a heavily used public resource and part of the State's public trust. HCR 258 asked the Office of Planning to coordinate meetings of state and county agencies to discuss the overgrowth of vegetation on Kahala Beach. State and City and County of Honolulu agencies willingly collaborated toward a solution. Although the Department of Land and Natural Resources issued letters to property owners on May 7, 2008 requesting voluntary removal of vegetation that encroached onto the beach seaward of the shoreline, there was only one affirmative response. At that particular site, the result was increased beach width, public open space and improved lateral access. Removal of the encroaching vegetation clearly enhanced the quality of the beach and its public value in accordance with the state's public trust doctrine.

PROBLEM

Human induced vegetation that blocks access to beaches is a statewide problem. At Kahala Beach, there have been numerous community complaints about the human induced vegetative growth and its adverse effects on access to and transit along the beach.

A government-community site visit was conducted on November 27, 2007 and revealed extensive vegetative growth of *hau*, *naupaka* and other salt-tolerant plant species growing on the beach corridor blocking lateral beach access at high tide. According to HCR 258, much of the vegetation appears to be induced by neighboring property owners as indicated by unnaturally thick and aggressively growing vegetation and may be due to a proliferation of sprinklers installed both seaward and landward of walls and fences.

ACTIONS TAKEN

The Office of Planning convened and facilitated meetings which involved the Department of Land and Natural Resources, Department of Planning and Permitting,

Coastal Zone Management Program and community members and city county and legislative staff members on January 7, 2008, April 17, 2008 and September 4, 2008.

The Office of Conservation and Coastal Lands (OCCL), Department of Land and Natural Resources (DLNR) met with the Kahala Neighborhood Board and elected representatives, and conducted several site inspections along Kahala Beach. The DLNR issued letters to property owners of twelve lots fronting the beach requesting voluntary removal of the encroaching vegetation (see Attachment 1).

To date, only one property owner has complied with the DLNR request by removing the encroaching vegetation fronting the property. As a result of the vegetation removal, the public beach area was restored enhancing the public's use and enjoyment of the public resource abutting the property site. See before and after pictures shown below (Fig.1 & 2).¹



Figure 1. Before and After the Removal of Encroaching Vegetation

¹ All photos were provided by Ms. Lucinda Pyles.



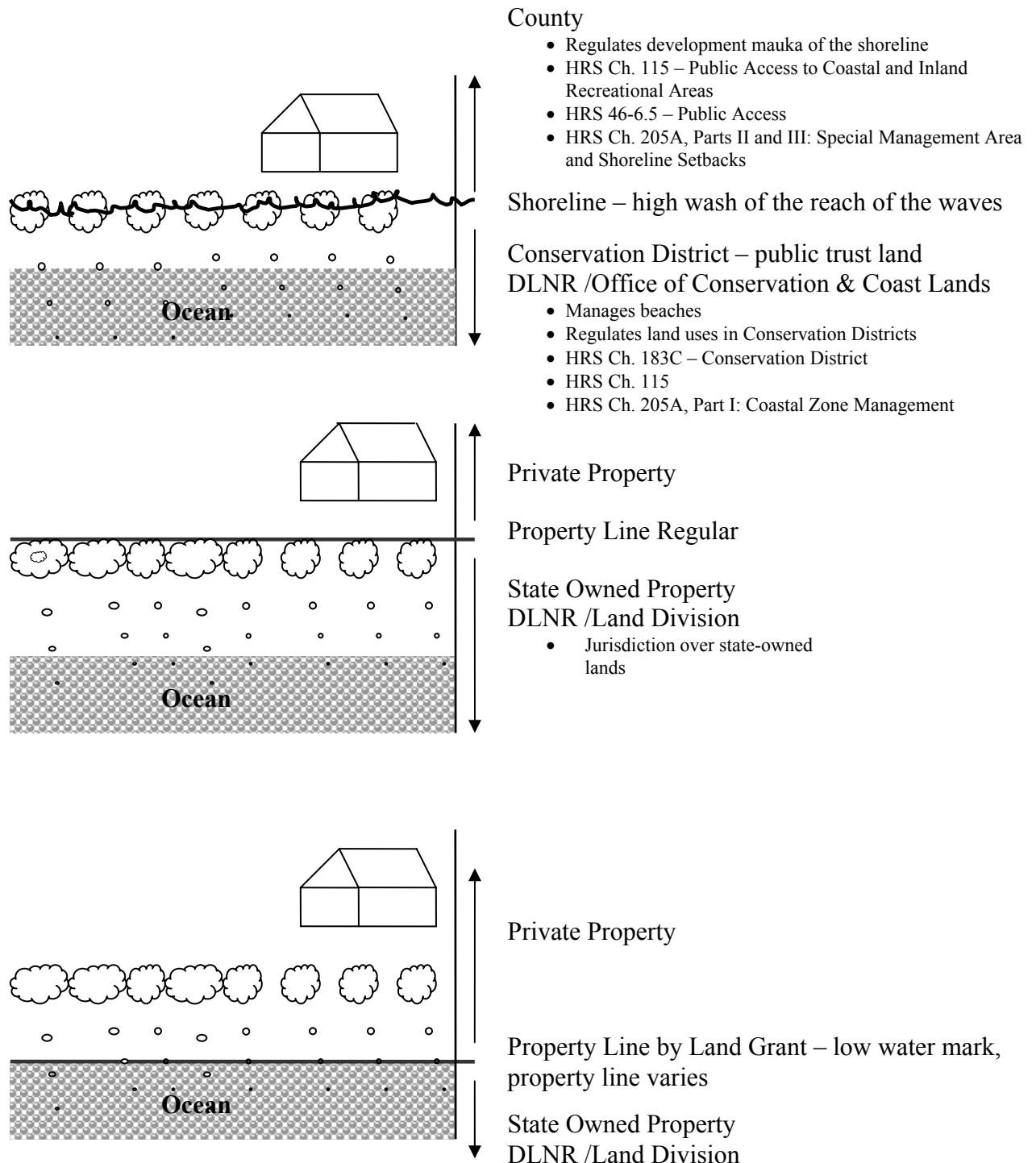
Figure 2. Recovery After the Removal of Encroaching Vegetation

In addition, the City and County of Honolulu Department of Planning and Permitting (DPP) said that they would increase enforcement efforts to prevent landowners from extending landscaping activities into beach area seaward the certified shoreline. DPP indicated that it would make the elimination of non-natural vegetation extending seaward of the property boundary a required condition for permits and variances (*Legislative Summary 2008*, Representative Lyla Berg).

BACKGROUND INFORMATION

Jurisdiction over shoreline areas is divided among several agencies. Regarding the shoreline vegetative encroaching issues, the county retains the jurisdiction over the lands mauka of the shoreline, while the state is responsible for regulating land uses makai of the shoreline. The following diagram illustrates the delineation of responsibility and authority for uses and activities in the shoreline areas.

CONCEPTUAL DIAGRAMS OF JURISDICTION OF STATE AND COUNTY AGENCIES ALONG THE SHORELINE



If there is evidence that an abutting property owner is responsible for the encroaching vegetation such as new plantings, soil, watering or fertilizing seaward of the shoreline, the DLNR can cite property owner and require removal of the vegetation as a violation of the Conservation District rules. Although the DLNR has authority to require removal of unauthorized landscaping, oftentimes it is difficult to prove beyond reasonable doubt the vegetation was human induced if there is no direct evidence of such actions. For example vegetation that is growing into the water may be naturally occurring in some circumstances and would be extremely difficult to successfully pursue enforcement action on with direct evidence of these activities.

POSSIBLE NEXT STEPS

The Working Group discussed the following proposal but has not reached consensus on it. It is offered for discussion purposes only.

There are many areas throughout the State where the overgrowth of vegetation has blocked access to and transit along the beach. Government agencies do not have the financial resources to remove the vegetative overgrowth, nor should they be responsible for private property owner actions. In addition, questions have been raised as to whether and under what circumstances government can require property owners to remove irrigation lines or vegetative overgrowth. Some believe that an ordinance similar to the one for sidewalk maintenance (Revised Ordinances C&C Honolulu Ch.14 Article 20) which requires property owners to maintain adjacent sidewalks is needed. The C&C of Honolulu issues 2,000 to 3,000 citations for sidewalk violations per year. Violations include obstructions or overgrowth on sidewalks. The property owner is given a specific amount of time to clean up the sidewalk. If this does not happen, the City cleans up the sidewalk and bills the property owner.

Significantly, the sidewalk maintenance ordinance places the responsibility to maintain sidewalks on the adjacent property owners, somewhat as a civic duty as some might say. It does not matter whether or not the adjacent property owner caused vegetative

growth or placed obstructions on the sidewalk. This is an important feature of the ordinance because it means that the enforcing agency, the City and County of Honolulu, does not have to prove that the property owner caused the encroaching vegetation or placed obstructing items on the sidewalks. Therefore, it would be critical that legislation that seeks to maintain beach transit include a similar provision in order to effectively administer such legislation.

There has been interest in relying on Chapter 205A, HRS, for controlling the vegetative overgrowth issue. However, it should be noted that this law functions as a statewide policy framework for coastal and ocean activities. It builds upon the responsibilities and functions of the various state and county agencies, and relies on their actions for implementation of the CZM objectives and policies. Therefore, it is suggested that the proposed legislation:

- Amend Chapter 115, HRS, Public Access to Coastal and Inland Recreational Areas, by adding a new part entitled Maintaining Beach Transit Corridors.
- The content of the measure would be patterned after Ch. 14, Article 20 of the City's ordinance. It would specify that the adjacent landowner is responsible for removing privately induced vegetation that encroaches on or blocks access and transit along the beach.
- For lands seaward of the shoreline and/or in the State conservation district, the DLNR would have explicit authority to issue citations to property owners for violations, and if the vegetation is not removed by the abutting or cited property owner within a specified timeframe, the DLNR would be authorized to remove the vegetation at the property owner's expense. Chapter 183C, HRS, (Conservation District) would be amended to legalize this measure.
- For lands *mauka* of the shoreline and therefore not in the State conservation district, the county would be authorized to issue citations to property owners. If the vegetation is not removed by the cited property owner within a specified timeframe, the county may remove the vegetation at the property owner's expense.
- Chapter 205A, HRS, is also proposed to be amended for policy support.

There was not full agreement among the Working Group members as to whether Ch.183C needs to be amended and whether Ch.205A should be amended without corresponding amendments to other statutes. Another approach would be to draft an entirely new chapter to incorporate the elements of this proposal.

In addition, the following would be pursued:

1. In collaboration with the DLNR and the counties, a layman's guide to laws, rules and regulations and jurisdictions in the shoreline should be prepared. In addition, the guide would also incorporate recent court decisions and rulings relating to the shoreline as well as include an inventory of the relevant laws, rules and regulations.
2. Documentation of case histories of other shoreline vegetation controversies around the state.

Reference: *Report on the Jurisdiction of the State and Counties Regarding Shoreline Area Issues.* Prepared by the Hawaii Coastal Zone Management Program, Office of State Planning, January 1990.

Attachments

1. Sample Letter from DLNR to Property Owners
2. List of Property Owners
3. Parcels of Property Owners
4. City and County of Honolulu Revised Ordinances Ch. 14 Article 20. Cleaning and Maintaining Sidewalks

Appendix 1. Sample Case Study. Kaanapali Shoreline Vegetation Encroachment

Attachment 1

Sample Letter from DLNR to Property Owners



DLNR:OCCL: DE

May 7, 2008

Correspondence: OA-08-239

To Whom it May Concern,

SUBJECT: Shoreline Vegetation Seaward of the Shoreline.

The Department of Land and Natural Resources' (DLNR) Office of Conservation and Coastal Lands (OCCL) is asking for your cooperation in addressing vegetation that is growing across the beach. After receiving numerous complaints from the community, meeting with the neighborhood board, elected representatives, and City and County of Honolulu Department of Planning and Permitting (City) personnel, the OCCL has conducted several site inspections along the beach at Kahala. The most recent of these site visits occurred on May 5, 2008 and identified locations where the coastal vegetation is growing seaward of the shoreline, including at your property (Figure 1).

Coastal vegetation is an integral part of the native ecosystem and can provide an important ecological and environmental function, including coastal dune stabilization. However, when certain species of coastal vegetation are allowed to grow unfettered in an urban beach environment, it can create community wide problems. Coastal vegetation that extends seaward of its natural range can impede public access by creating a barrier at the fragile intersection of submerged and fast lands.

Kahala Beach is a heavily used public resource and a part of the State's public trust lands. As such, the OCCL is evaluating options to improve shoreline and beach access by addressing vegetation that has spread makai of the shoreline, onto the public beach. The OCCL and the City have conducted a joint investigation of the encroaching vegetation in Kahala and identified the beach in the vicinity of your property as a candidate for vegetation removal. Moving vegetative barriers inland allows homeowners to maintain the privacy barriers they have grown accustomed to, while fostering healthy shoreline access and beach use on a heavily used urban beach.

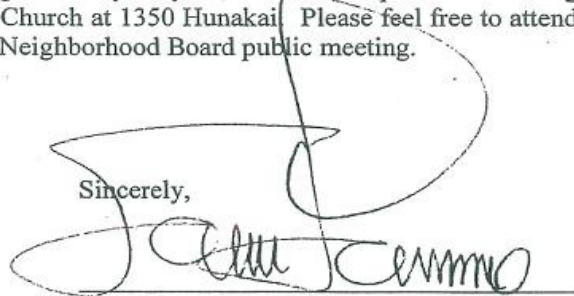
Sandy beaches rapidly respond to changes in the wave climate, with morphologic and sediment variability tied to energy dissipation and sediment transport relationships. An active beach and dune system that migrates with the shoreline is the most effective natural barrier for coastal hazards. Unnatural 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 episodic erosional 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 nearshore wave energy. By moving the coastal vegetation to an appropriate landward location, you will be improving coastal access and reducing risks from coastal hazards. This is also in keeping with Hawaii Revised Statute §115-5, which protects the public's right to access shorelines, as well as ensuring use of the beach as public trust lands.

The OCCL plans to be an active participant in an effort to work with local landowners, residents, the City and County, and others to improve shoreline access. **The OCCL requests that as an abutting land owner, you assist in this process by proactively removing any encroaching vegetation seaward of the shoreline (Figure 1).** The OCCL sincerely appreciates your cooperation in this matter. Should you agree with this measure or have any questions, please contact the Office of Conservation and Coastal Lands, at (808) 587-0377, within 30 days so that we may assist you.

The OCCL will also be conducting an information presentation as part of the normally scheduled Kahala/Waialae Neighborhood Board meeting Thursday May 15, 2008 at 7:30pm. The meeting will be held at the Wesley United Methodist Church at 1350 Hunakai. Please feel free to attend and ask questions or comments as part of the Neighborhood Board public meeting.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a horizontal line.

Samuel J. Lemmo, ADMINISTRATOR
Office of Conservation and Coastal Lands

Attachments: Figure 1. Site Photo

CC: Chairperson
Oahu BLNR Members
City and County of Honolulu Dept of Planning, Jaime Peirson
CZM, Doug Tom
Representative, Lyla Berg
Representative, Barbara Marumoto
Kahala/Waialae Neighborhood Board

Attachment 2**List of Property Owners Who Received the Letter**

Name	Address	TMK	Date sent	Response
4615 Kahala Ave Corporation (Whom it may concern)	4615 Kahala Ave, Honolulu, HI 96816	TMK(1) 3-5-05:015	05/07/2008	None
Asagami Corporation	2222 Kalakaua Ave#905 Honolulu, HI 96813	4623 Kahala Ave TMK(1) 3-5-05:014	05/07/2008	Trimmed back shoreline vegetation
Cecily Johnson	4653 B Kahala Ave Honolulu, HI 96816	TMK(1) 3-5-05:009	05/07/2008	Objection
Chikako Takeda	4663 Kahala Ave, Honolulu, HI 96816	TMK(1) 3-5-05:006	05/07/2008	None
Fox Family Trust	1001 Bishop St. Pauahi 1600 Honolulu, HI 96813	4821 Kahala Ave, TMK(1) 3-5-59:001	05/07/2008	None
Gensiro Kawamoto	4837 Kahala Ave, Honolulu, HI 96816	TMK(1) 3-5-59:006	05/07/2008	None
Gensiro Kawamoto	4823 Kahala Ave, Honolulu, HI 96816	TMK(1) 3-5-59:008	05/07/2008	None
Gensiro Kawamoto	4767 E&D Kahala Ave, Honolulu, HI 96816	TMK(1) 3-5-06:009	05/07/2008	None
Gensiro Kawamoto	4631 Kahala Ave, Honolulu, HI 96816	TMK(1) 3-5-05:013	05/07/2008	None
Kahala Corporation	P.O. Box 3170 Honolulu, HI 96802	4635 Kahala Ave TMK(1) 3-5-05:010	05/07/2008	None
Sagawa Express Co. LTD	1994 Ala Mahamoe Pl. Honolulu, HI 96819	4815 Kainapau Pl. TMK(1) 3-5-59-005	05/07/2008	None
Wegmann Trust	601 California St. Suite 1100, San Francisco, Cal 94108	4819 C&D Kahala Ave, TMK(1) 3-5-59:010	05/07/2008	None

Attachment 3

Parcels of Property Owners Who Received the Letter



Attachment 4. City and County of Honolulu Revised Ordinances Ch. 14 Article 20. Cleaning and Maintaining Sidewalks

Sections:

14-20.1 Cleaning of sidewalks.

14-20.2 Procedure on owner failing to clean.

14-20.3 Notice to property owners.

Sec. 14-20.1 Cleaning of sidewalks.

Every property owner whose land abuts or adjoins a public street shall continually maintain, and keep clean, passable and free from weeds and noxious growths, the sidewalk and gutter area which abuts or adjoins the property owner's property; provided, however, that this requirement shall not apply where maintenance of an abutting sidewalk and gutter may be hazardous to the owner, or where a sidewalk and gutter, although abutting the owner's residential property, are so situated that there is no reasonable access from the property to the sidewalk and gutter. The term "sidewalk" as used herein, shall mean that portion of a street between a curb line or the pavement of a roadway, and the adjacent property line intended for the use of pedestrians, including any setback area acquired by the city for road widening purposes. The term "gutter" as used herein, shall mean that paved portion of a roadway immediately adjacent to the curb or that portion of a roadway in concrete and 12 to 14 inches wide immediately adjacent to the curb. (Sec. 20-4.1, R.O. 1978 (1983 Ed.))

Sec. 14-20.2 Procedure on owner failing to clean.

If any such owner or such owner's agent, which shall include but not be limited to a lessee, tenant, property manager or trustee, after receiving notice from the city, fails, within 20 days after such notice, to clean such sidewalk, or fails and neglects to keep such sidewalk clean and free from weeds and noxious growths, then and thereupon the city may proceed to clean such sidewalk, as may be reasonably required, and the cost thereof shall be charged to and against such property owner and shall be collected from such property owner or the property owner's agent, if not immediately paid, by action in the district court. (Sec. 20-4.2, R.O. 1978 (1983 Ed.))

Sec. 14-20.3 Notice to property owners.

The notice specified in Section 14-20.2 shall be sent to such property owner by mailing it to the property owner's last known address in the State of Hawaii, or to the property owner's agent at the property owner's agent's last known address. (Sec. 20-4.3, R.O. 1978 (1983 Ed.))

APPENDIX 1 SAMPLE CASE STUDY: KAA NAPALI SHORELINE VEGETATION ENCROACHMENT

During the early 1990's, there were public complaints of vegetation encroaching onto the Kaanapali shoreline. The Coastal Zone Management Program, Office of Planning worked with the County of Maui Planning Department and Maui District Land Agent, Land Division, Department of Land and Natural Resources (DLNR) on this issue. Shoreline certification maps and photographs were obtained. The Maui District Land Agent, Land Division, DLNR, issued citations to property owners. The property owners responded by removing the encroaching vegetation.

The following page contains photos showing the certified shoreline and encroaching vegetation.

KAANAPALI SHORELINE VEGETATION
ENCROACHMENT

10/23/01 11:30 AM

(67)



TMK 4-4-08:19
Cert. Shoreline (veg) Feb. 5, 1985
Pt. 95 20.0' to Veg 23.2' to edge s/w
Pt. 96 32.5' to Veg 19.0' to edge s/w
Pt. 97 25.0' to Veg 22.6' to edge s/w

10/12/91 9:15 AM

(68)



TMK 4-4-06:29
Cert. Shoreline (TG/veg) Nov. 28, 1989
Pt. 165 8.5' to Veg.
Pt. 167 9.0' to Veg 54.3' to edge s/w

10/23/01 11:30 AM

(69)



TMK 4-4-08:19
Cert. Shoreline (veg) Feb. 5, 1985
Pt. 94 5.0' to Veg 43.0' to edge s/w

10/23/01 3:45 PM

(50)



TMK 4-4-06:29
Cert. Shoreline (TG/veg) Nov. 28, 1989
Pt. 153 10.7' to Veg 34.8' to edge s/w