

# At Kuki'ō, Sandbags, Irrigation, And Plantings Encroach on Beach

One of the most exclusive enclaves in Hawai'i is the gated community of Kuki'ō, adjoining the Four Seasons Hualalai resort on the western coast of the Big Island. Although homes in the area have a property-tax valuation as high as \$74.250 million (for computer developer Michael Dell's sprawling "Raptor Residence"), members of the public can still enjoy the beauty of the beach fronting the area.

For now, at least. While the beach remains.

In recent years, the area along the shoreline has been planted with naupaka and pohuehue (beach morning glory). Approval for the plantings was granted in 2001 by then county Planning Director Chris Yuen. Yuen gave the okay in response to a request to install the "landscaping improvements" made by WB Kukio Resorts, LLC, the developer of the area. The improvements, wrote James Leonard of PBR Hawai'i, the planning consultant for Kuki'ō Resorts, would not "interfere with public access, public views, and activity to and along the shoreline."

Leonard stated further that the improvements "would not affect beach processes or artificially fix the shoreline." Rather, they "are planned in the area of the shoreline setback area mauka of the existing certified shoreline.... These plantings are proposed primarily as an expansion of the existing coastal native plant communities that are adaptable to the conditions present and support the natural beach berm located within the shoreline setback area."

Photos that Leonard submitted along with a map showing the areas of the proposed plantings depict a broad expanse of sand from the ocean to well within the setback area. The berm he referred to is shallow and sandy, characterized with low naupaka patches and occasional coconut palms and beach heliotrope trees.

That same area today is, for the most part, covered with a dense growth of naupaka. The berm has been fortified with sandbags that are positioned in breaks in the naupaka where the mauka homeowners have private paths to the beach. Shredded bags buried in the sand suggest that the efforts to buttress the berm have been occurring for some time.

Irrigation lines (both abandoned and in current use) have been placed shoreward of

the top of the berm, often extending into bare sand. In addition, in at least one spot, remnants of geotextile fabric can be seen poking out from the sand.

Plantings have often been used in an effort to fix the shoreline and protect private property in Hawai'i. The most egregious example of this might be the north shore of Kaua'i. At Ha'ena, property owners installed a sandbag revetment more than two decades ago to address what they said was an emergency situation created by large ocean swells. Since then, a dense cover of naupaka has grown over the sandbags and the property owners have attempted to

certify the shoreline at the base of the revetment. (For more on this, see the October 2017 cover story in *Environment Hawai'i*: "Whatever Happened to ... The Ha'ena Sandbag Revetment.")

Another disputed shoreline, once again at Ha'ena, Kaua'i, led to a landmark Supreme Court decision in 2006 that drew a line in the sand, so to speak, as to just how shorelines were to be determined. That decision, *Diamond v. State of Hawai'i*, made it clear that surveys were not to use the vegetation line to determine the shoreline when the debris line or reach of the high wash of the waves was further inland.

"The utilization of artificially planted vegetation in determining the certified shoreline encourages private landowners to plant and promote salt-tolerant vegetation to extend their land further makai, which is contrary to the objectives and policies of



A photo that was included with the 2001 request for approval of plantings at Kuki'ō beach. Yellow tape marks the certified shoreline.



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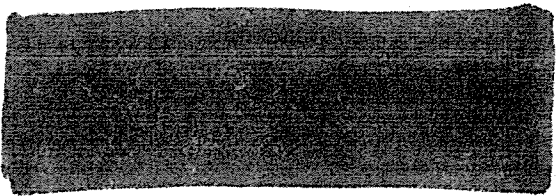
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HRS Chapter 205A as well as the public policy we set forth in *Sotomura*,” the high court found, referring to a 1973 decision. The justices went on to conclude, “We therefore reconfirm the public policy set forth in *Sotomura* and HRS Chapter 205A and reject attempts by landowners to evade this policy by artificial extensions of the vegetation lines on their properties.”

Whether it is the intention of the Kuki'o Community Association, which owns the

lot where the plantings have been made, to fix the shoreline or merely to afford more privacy to the uber-rich mauka landowners (including Michael Dell, Paul Hazen, the ex-CEO of Wells Fargo and now chairman of KKR Financial, Sutter Hill Ventures' David Anderson, and David Roux of the investment firm Silver Lake), is not clear. Questions posed to the association's manager, Paola Pagan, were not answered by press time.

The state Department of Land and Natural Resources' Office of Conservation and Coastal Lands (OCCL) has management responsibility for lands makai of the certified shoreline. On its website, it says that owners of lands along the coast “are required to maintain the vegetation along the seaward boundary of their property to ensure that it does not inhibit the ability of the public to access the shoreline.”

“In the past, some coastal landowners have made efforts to induce or cultivate vegetation along the shoreline to create a privacy buffer and, in some cases, attempt to alter the location of the natural shoreline. A

person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing a beach transit corridor. Obstructing access to public property is a misdemeanor.

“OCCL is the lead agency with authority for maintaining public access along Hawai'i's shorelines. Along beach transit corridors where the abutting landowner's human-induced, enhanced, or unmaintained vegetation interferes or encroaches with beach transit corridors, the Department of Land and Natural Resources may require the abutting landowner to remove the landowner's interfering or encroaching vegetation.”

Sam Lemmo, OCCL's administrator, was asked if the situation at Kuki'o beach was something that might concern his office. He replied that he or someone from his staff would need to take a look at it. With the OCCL having no staff on the Big Island, the next visit by Lemmo's staff to the area might be months away.

— Patricia Tummons

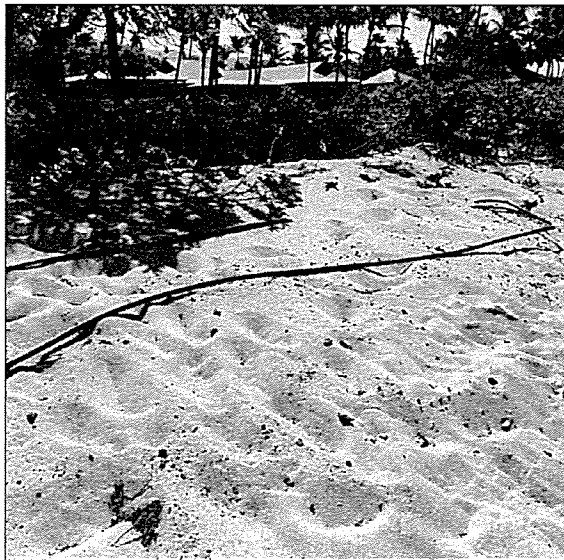
## It's the Law

In 2010, the Legislature passed Act 160, which makes it clear that landowners are not to interfere with the public's access to beaches by means of plantings or other activities. The act defines beach transit corridors as the area seaward of the shoreline and authorizes the Department of Land and Natural Resources to require abutting landowners to remove “interfering or encroaching vegetation.”

In addition, the legislation amended the state's Coastal Zone Management Act (HRS 205A) to prohibit, as a policy, private property owners “from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor.”

Finally, the act put the onus on the DLNR to police the beach transit corridors and ensure that the abutting property owners keep the public areas “passable and free from the landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach transit corridors.”

Violators can face misdemeanor penalties of \$1,000 for first-time offenses and \$2,000 for second offenses and those following.



In the photo on the left, irrigation lines extend into the bare sand. At right, disintegrating sandbags are exposed seaward of naupaka plantings.