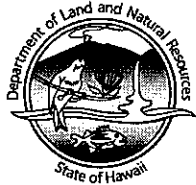


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR
Chairperson**

**Before the House Committee on
JUDICIARY**

**Thursday, March 29, 2012
2:00 PM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 2305, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO OCEAN RESOURCES**

Senate Bill 2305, Senate Draft 2, House Draft 1 proposes: 1) Amend Sections 171-58.5 and 205A-44, Hawaii Revised Statutes (HRS), by deleting the "one gallon per person per day" exception to the prohibition against the removal of sand and other beach or marine deposits, except for material inadvertently taken, such as those carried away on the body, clothes, toys, recreational equipment and bags in PART I; and 2) Amend Chapters 171 and 183B, HRS, to require the Department of Land and Natural Resources (Department) to establish the East Honolulu Fishpond Heritage Area that identifies at least owned lagoon or area that is jointly owned by the Department of Transportation (DOT) and other private land owners in PART II. The Department has no objection to PART I, but does not believe PART II of this measure is necessary

With regard to PART II, at the last hearing on companion House Bill 2820, House Draft 3 before the Senate Committee on Water, Land and Housing and Senate Committee on Hawaiian Affairs on March 9, 2012, the Chairperson of the Department and the Director DOT stated that they are in discussions in trying to meet the intent of House Bill 2820, House Draft 3, and therefore didn't believe the measure was necessary. As a result, the Senate Committees chose to defer the measure..

The Department offers the following comments on the additional fishpond provisions of this current bill. The current bill now requires the Department to come up with new rules for the leasing of public lands for Hawaiian fishponds. However, existing law¹ is already very thorough

¹ Hawaii Revised Statutes Section 171-28 and Chapter 183B.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

and more than adequate on the processes and procedures for the issuance of leases of Hawaiian fishponds on public lands. Therefore, there is no need for new rules for leasing purposes.²

The current version of the bill also requires the Department to "[p]reserve customary and traditional uses of fishponds in the fishpond heritage area". The Department finds difficulty with this provision as it is overly broad. In addition, this provision as written may place upon the Department the responsibility to restore the fishponds, which would require the expenditure of significant human and financial resources in these times of limited resources.

Finally, at least some of the properties identified in the bill are owned in fee DOT. The Department does not have any interest in any of the properties identified in the fishpond provisions. DOT acquired these private lands in a condemnation proceeding using federal highway funds in connection with the Kalaniana'ole Highway widening project. The Department notes that in the event the properties are offered to be transferred by DOT to the Department at gratis,³ the Department would still need to conduct the necessary due diligence prior to a recommendation and final decision by the Board of Land and Natural Resources on any acquisition.⁴

Thank you for the opportunity to provide testimony on this measure.

² To the extent the rule making requirement was intended to streamline or exempt applicants from permitting requirements (other than leasing), such as the special management area or conservation district requirements, any subsequent attempts to do so by rules would not be successful as the proposed legislation does not provide for that authority.

³ DLNR is in no position to compensate DOT for the lands, and certainly unable to pay fair market value.

⁴ In regards to the parcel identified in the bill as Tax Map Key No.: (1) 3-8-002:027, the fishpond is owned jointly by the surrounding landowners, which includes DOT. Pursuant to a restrictive covenant, any use of the fishpond must be approved by all landowners. As noted in prior testimony, the neighboring private landowners are opposed to fishpond being included in the proposed heritage area.



SB2305 SD2 HD1
RELATING TO OCEAN RESOURCES
House Committee on Judiciary

March 29, 2012

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2305 SD2 HD1. Part I sections 1 and 2 of this bill would clarify the prohibition against removal of sand and marine deposits with certain exceptions. Part I section 3 provides state lease preferences for the restoration of Hawaiian fishponds and creates a preference for the use of traditional names of Hawaiian fishponds. Part II section 4 would require the Department of Land and Natural Resources (DLNR) to establish the east Honolulu fishpond heritage area.

With regard to Part I sections 1 and 2, OHA notes that its recommendations have been adopted and the “one-gallon” restriction has been preserved. OHA supports further protection of Hawai‘i’s beaches and resources and understands that alleged large scale sand removal at Hawai‘i’s beaches may have long-term impacts on our natural and cultural resources. We support SB2305 SD2 HD1’s attempt to address this and agree that deleting the exception for intentional removal of sand and other materials could abate these long-term impacts by making reporting and enforcement easier. OHA reiterates that inadvertent takings can also have long-term impacts on Hawai‘i’s shorelines and adding the “one-gallon” language puts the onus on individuals to ensure that even accidental removal is minimized.

With regard to Part I section 3 and Part II section 4, OHA supports the efforts of this legislature to foster the rehabilitation and restoration of Hawaiian fishponds. From historic times to the present, fishponds have been an important cultural resource for Native Hawaiians. Today, fishponds not only serve as a source of sustenance for communities, they also offer a wide range of educational opportunities in the areas of math, science and Hawaiian culture. In addition, fishpond restoration has become a major part of the Hawaiian cultural revival movement, with a number of groups across Hawai‘i taking on the kuleana of bringing once-forgotten fishponds back to life. Providing lease preferences to fishpond restoration on public land will streamline the permitting and approval processes which have previously hindered efforts to revive these cultural treasures.

Specifically, Kalauha‘iha‘i and Kanewai are two of the very few remaining intact Hawaiian fishponds in Honolulu. Kalauha‘iha‘i fishpond was actively used

March 28, 2012

The Honorable Gilbert Keith-Agaran, Chair
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Committee Members:

RE: TESTIMONY IN OPPOSITION TO SB 2305, SD2, HD1

We are testifying in strong opposition to Senate Bill 2305, SD2, HD1. This HD1 version added the contents of House Bill 2820, HD3 which would create the East Honolulu fishpond heritage area encompassing State-owned parcels in Kuliouou, including the parcel identified as TMK: 3-8-002:027 which is located on our lagoon.

We are a cozy little neighborhood of homes surrounding a small 3-acre lagoon which we call Kuliwai Lagoon (referred to as "Kanewai fishpond" in SB 2305, HD1 and HB 2820, HD3). The Kuliwai/Kanewai Lagoon is privately and jointly owned by the surrounding property owners. The Committee should know that in our deeds there is a restrictive covenant which requires that the lagoon only be used in the manner approved by the surrounding lagoon owners. The deed of the State parcel identified as TMK 3-8-002:027 (see page7, lines 12-13) also includes this restrictive covenant.

In 2008, the Maunalua Fishpond Heritage Center (MFHC) approached the surrounding lagoon owners to assess whether we would support MFHC's desire to access and work in the Kuliwai/Kanewai Lagoon, including conducting research, educational and community activities. Our Kuliwai Lagoon Association met and unanimously agreed that while we are interested in discussing ecological issues, we deeply treasure our privacy and would not allow any public or semi-public uses of the lagoon including the activities contemplated by MFHC. Our Association's position was communicated to MFHC in writing.

Further, as the bill's title relates to "ocean resources," the Committee should be aware that the State-owned parcels in the bill (refer to page 7, lines 10-13) identified as TMKs: 3-8-002:030 (Kuliwai/Kanewai lagoon) and 3-8-002:027 are not located on or near the ocean and are not connected to the ocean. Kuliwai Lagoon has a small inlet that connects it to Paiko Lagoon (which then goes out to the ocean). Our lagoon is not like Heeia Fishpond which extends into the ocean. Instead, our privately-owned lagoon is surrounded in its entirety by several homes.

We encourage the Committee to consider deleting lines 10-13 on page 7 of this bill. Thank you for your consideration of our testimony.

Sincerely,

Dr. Richard T. Mamiya
Richard, Kirsten and Michael Melcher
James and Michelle Trans
Miss Paris Beauty Academy Inc.
Dennis Yeomans

Testimony for SB2305 on 3/29/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, March 28, 2012 9:37 AM
To: JUDtestimony
Cc: kgsyoung@hotmail.com
Attachments: photo (1).jpg (136 KB) ; photo (2).jpg (131 KB)

Testimony for JUD 3/29/2012 2:00:00 PM SB2305

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Karen Young
Organization: Individual
E-mail: kgsyoung@hotmail.com
Submitted on: 3/28/2012

Comments:

TESTIMONY IN SUPPORT OF SB2305

The current law of 1 bucket /per person/per day is not being followed. For the past 25+ years our family has seen trucks, vans and even family cars, pull up to the beach across from our house and proceed to load up their vehicles with sand. No one has ever taken only 1 gallon.

The smallest load I've witnessed is five 5 gallon buckets at one time. When I'm in our yard I would see this occurring approximately 3-4x/wk, sometimes several times in a single day. Sometimes I'll just happen to look out our makai window and see it going on. We also see it going on at night. The usual scene is 2-3 men shoveling sand into 5 gallon buckets which are then emptied into 3-4 trash bins in the truck bed. They work quickly, sometimes there are as many as 6 men.

Police have been called, but this is not an emergency and by the time they arrive, the vehicles have driven off. If I confront the perpetrators they simply move to another part of the beach and carry on, as they feel they are only doing it for a purpose (construction, etc.)

And it's not only people doing this. Groups of men have come and loaded huge truck loads, saying it's for the church. And a former lifeguard also told us years ago the government built a road over a wide beach in Makaha (across from what is now Makaha Marketplace), leaving a narrow remnant beach in it's place. When it storms, sand covers the road, trying to return to what it used to be.

I'm sure this stealing of sand is going on at other not so visible beaches. It wouldn't happen at Waikiki, Ala Moana Beach, or any other visitor beach. Many if not most of the beaches in Wai'anae once had large high sand dunes. They served as natural sand slides and sand boarding areas. They also worked as protection from high waves. Now they are nearly flattened in most areas.

Beaches are not infinite and after so many years of neglect, need protection and restoration like any other natural resource. Unfortunately, folks will take all they can if allowed to continue. Our family is witness to the fact that the 1 bucket /per day / per person is not being followed nor enforced. You cannot expect a policeman to come to watch anyone taking sand and make sure it's only 1 gallon per person per day everywhere on this island.

Please pass SB 2305.

Signed,

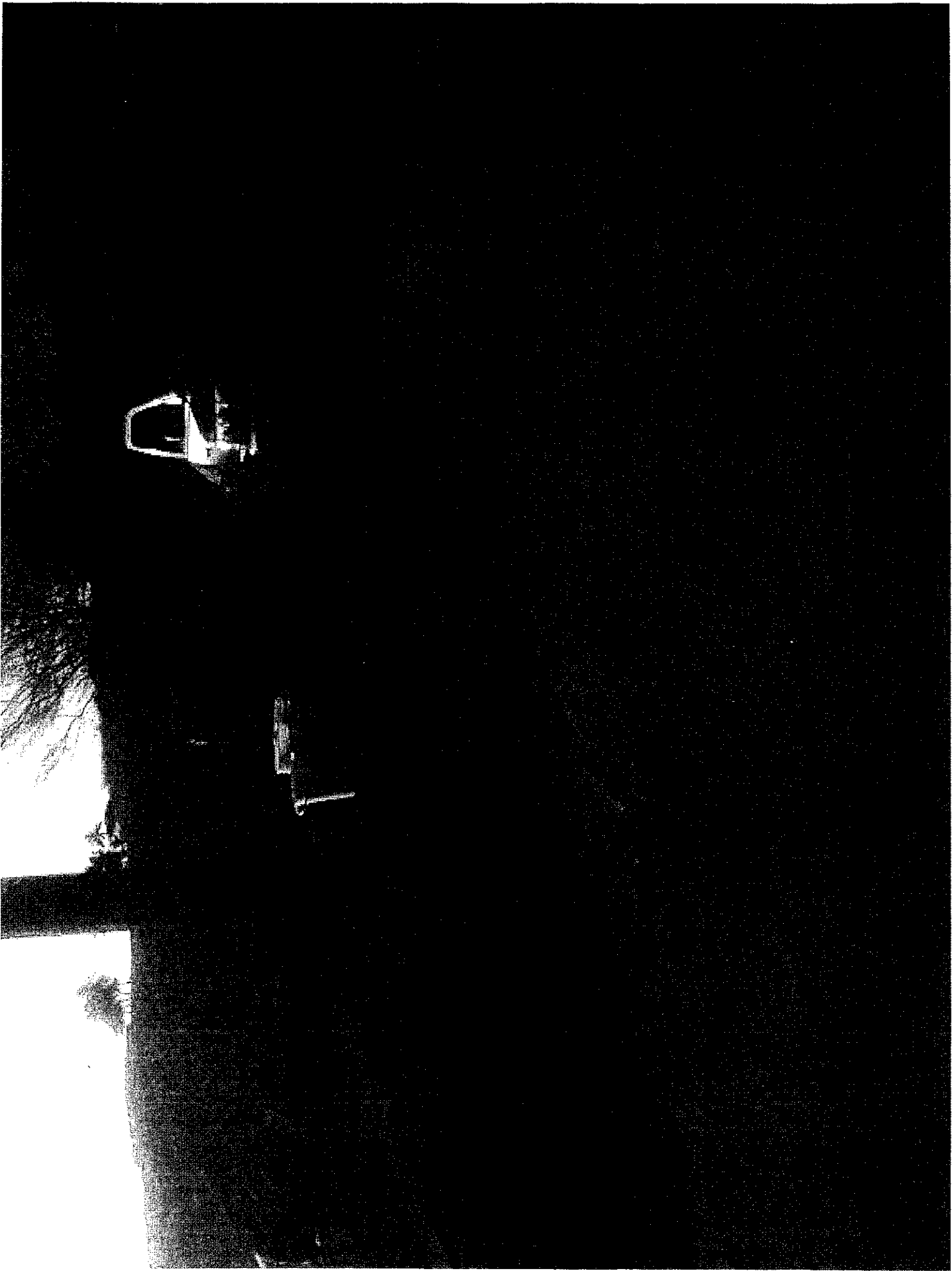
~Karen GS Young, APRN; Summer Miles; Rachelle Enos; Fred Dodge, MD
Wai'anae, HI

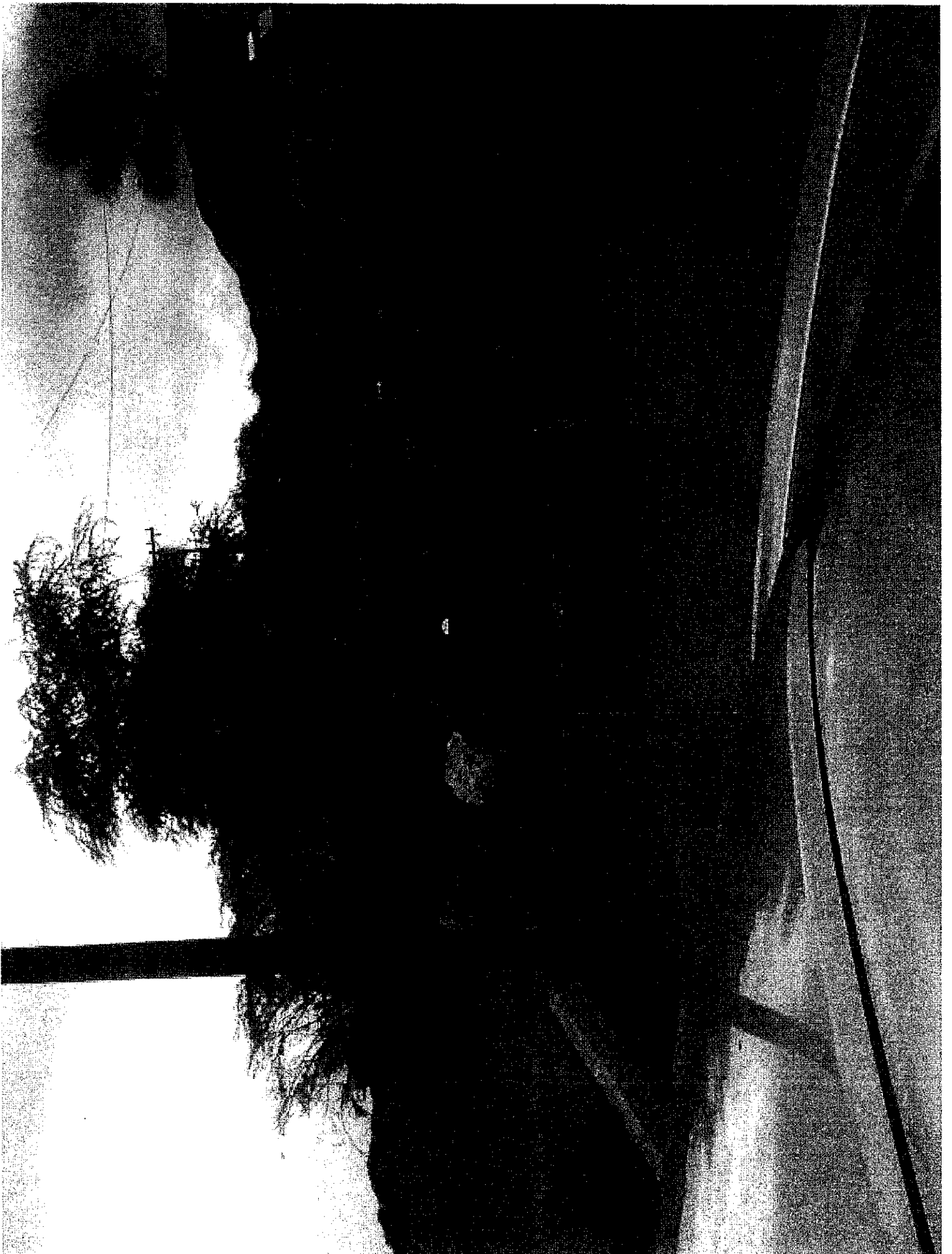
Testimony for SB2305 on 3/29/2012 2:00:00 PM

kgsyoung@hotmail.com

Caption for Photo 1: Photo was taken early in March 2012 off Pokai Bay St., Waianae. There is a man to the left shoveling more bucket fulls of sand. He did not want his photo taken because he is an immigrant. Later in the same day a white pick-up with 6 men all with shovels pulled up and started to fill containers to fill the truck. When I informed that what they were doing is illegal, they said it was for a "party". The license plate is PYV 674.

Caption for photo 2: This was also taken in early March 2012 off Pokai Bay St. in Waianae. 2 men had filled 4-5 five gallon buckets with sand using shovels & quickly fled. I have witnessed this happening 3-4 times per week for the past 25 years.





Regarding SB 2305

Regarding SB 2305

Nicholas Smith [NickS@inpeace.org]

Sent: Wednesday, March 28, 2012 1:43 PM

To: JUDtestimony

> To whom it may concern,

>

> I write you today in support of SB 2305, which proposes the deletion of the one gallon per person per day allowance of taking sand and stone from our beaches.

>

> My name is Nick Smith. I am 25 years-old and a lifetime resident of Wai'anae, HI. My family tells me that I could swim before I could walk, and learned to do so out on the leeward coast, most likely at Makaha Beach. I love the beach. I love the ocean. Because of this, I feel SB 2305 is an important piece of legislation for us to consider.

>

> I spent five straight summers of my adolescence in the Junior Lifeguard program, which teaches youth around the state valuable life-saving skills and further reinforced my appreciation for the ocean and it's power and beauty. My group was based at Poka'i Bay three days out of the week and Makaha Beach the other two. Fast-forward to 2012, and I'm hearing from friends of mine who live in the area that three to four times a week, under cover of darkness, men arrive at Poka'i in pick-up trucks and vans, proceed filling garbage cans with Poka'i sand, load up their vehicles, and leave.

>

> Now first I thought, "Dang, if these guys are coming late at night, they're already breaking rules." I, myself, have been asked to leave the Poka'i premises when I walked my girlfriend's dog there one night past 10pm. Then I thought, "Okay, if the rule says 1 gallon per person per day, then they must be using some really small trash cans or be traveling in a very large group," which are both contrary to what I've heard.

>

> Allow me to put this into perspective: your run of the mill public trash can, like the ones we see at beach parks like Poka'i, have an approximate volume of 105 gallons (This calculation is assuming the can is 3 feet tall, and 1.5 feet wide at the top). Now, I haven't heard reports of 105 people at Poka'i at night, plus a sand topped-off trash can of this size would weigh around 1,300 lbs (and that estimate is on the low side for sand, considering our west-side sand is not as fine and dense and therefore not as heavy as sand from other places)... So let's look at some real numbers:

>

> An average half-ton pick-up truck (assuming it can in fact haul a half-ton) loaded to max with sand could carry away about 80 gallons with one load. Let's say two trucks each hauled off one 1/2 ton load 3 times a week, adding up to 3 tons of sand removed in that amount of time. That may not sound like much, but in one year that's 156 tons of sand. That's a far cry from the 200,000+ tons removed from Waimea Bay alone since the 40's and 50's (the big jumping rock was once only a 6-foot bump above the sand of the beach - This references "Disappearing Sands" by Adam Ayers of Green Magazine Hawai'i, Vol. 3 #5), or the countless tons removed from Keawa'ula and other leeward beaches in the same period of time, but little by little, one gallon here and one gallon there change a beach forever. We know a few things to be true:

>

> First, coastal erosion is a natural occurrence, and it is cyclical like many other processes in nature. Waves pick up, sand goes out, swells change, sand comes back. But beaches like Poka'i and others protected by jetties and break-waters (which were put in place to keep the water calm and prevent sand from escaping but actually end up keeping sand out, a problem we face in Waikiki and probably the lagoons of Ko Olina too) can potentially lose their sand at rates that cannot be reversed naturally.

Regarding SB 2305

>

> Secondly, human alteration, like removing sand and building beach-front property atop former beaches and dune systems (the buffer between land and a healthy beach like those we can still find on the north shore) interrupt the natural cycles at work, and in many ways make the conditions for such permanent structures more dangerous, leaving them vulnerable to inundation and storm surge that may otherwise never reach human habitation because of the protection beaches and their dune system buffer zones provide.

>

> Third, we know that beaches are ecosystems vital for supporting many species on land and in the ocean, including humans. Just as an example, I can't remember exactly how long it has been since our beaches were picked clean of shells. I only really thought about it when I traveled to Florida and other places where stricter laws seem to deter people from taking too many shells, if any, allowing animals like hermit crabs to reuse shells that others have left behind.

>

> With all that said, I understand that sand is a resource like any other, and has many uses such as being mixed into concrete or filling sandbags to stave off floods, and these are beneficial for our economy and safety. However, like any other non-renewable resource, we need to recognize the opportunity that we have to allow our supply of sand to last as long as it possible can, now, before it's nearly gone, at which point we'll be shipping sand here from Abu Dhabi just to keep Waikiki the way it is now.

>

> We need to make taking sand and stone for these or any other purposes illegal (except maybe in emergency circumstances or with special permission, but even then still closely regulated) because with all the forces arrayed against and eroding our beaches, we may live to see some of them change irreparably, just as my father has in the past 30 years living in Wai'anae. I may even live to see some of them disappear entirely, leaving jagged and rocky husks behind. And I think we all know that our beaches, so vital to the tourism industry, cannot be allowed to be gradually destroyed.

>

> People may say, "The sand belongs to everyone, just like water, or dirt. You have no right to tell us who can and cannot take and use it," and for the most part I would agree. But being given the freedom to do so, to take from the Earth without considering the consequences of our actions, has led us to the particularly prickly environmental pickle that we are in right now. And, with such freedom, a few would abuse our natural resources and steal them away from us all. Those who would do this for the purpose of profit or power know no limits and in turn make it impossible for us as a whole sit back without a worry that our world is being ravaged right before our eyes.

>

> So, esteemed representatives of the people of Hawai'i, I implore you to take a hard look at SB 2305 and support it. Imagine a Hawai'i maybe not in our lifetimes, but our childrens' or theirs', stripped bare of its white sand beaches and all the good things that once took place upon them. Let's nip this one at the bud.

>

>

>

Sincerely,
Nick Smith

Testimony for SB2305 on 3/29/2012 2:00:00 PM

Testimony for SB2305 on 3/29/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, March 29, 2012 7:09 AM

To: JUDtestimony

Cc: mjellings@hawaii.rr.com

Testimony for JUD 3/29/2012 2:00:00 PM SB2305

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Carl Jellings Sr

Organization: Individual

E-mail: mjellings@hawaii.rr.com

Submitted on: 3/29/2012

Comments: