



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1497, RELATING TO STATE LANDOWNER LIABILITY.

BEFORE THE:

HOUSE COMMITTEE ON WATER AND LAND

DATE: Friday, February 3, 2017

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Andrew L. Salenger, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Department of the Attorney General opposes this bill.

The purpose of this bill is to create a new cause of action against the State for neighboring landowners who are damaged by the condition of the State's land. The bill establishes that the State breaches its duty of care when it fails to keep its land "in a clean and safe condition," when it fails to trim overgrown trees or plants, or when it allows a condition to remain on the land "that poses an imminent threat to the health or safety of neighboring landowners or their tenants or lessees." To bring a claim against the State, the neighboring landowner must provide the Department of the Attorney General with notice as specified in the bill. The neighboring landowner must tell the Department of the Attorney General how the State can remedy the situation by either "[c]ompensating the landowner a specified sum for the breach," or "[r]epairing the condition that caused the breach," or a combination of both.

We are concerned that this bill could be interpreted to create limitless exposure for the State for natural conditions on its undeveloped land. The state agencies and departments ("state agencies") that own land own large parcels of undeveloped land throughout the State, some of which are remote and inaccessible. This bill attempts to create a duty that would be almost impossible for the State to meet, resulting in unlimited liability to the State.

For the State to attempt to comply with this duty it would need to convert and alter much of the landscape and beauty of Hawaii's wilderness lands. Unimproved lands have inherent rewards and risks, which is why the State does not have a duty to warn the public about "dangerous natural conditions on unimproved public lands," pursuant to section 663-52(c), Hawaii Revised Statutes ("HRS").

We are particularly concerned about subsection (e) on page 4 of this bill, beginning on line 7, of the new section being added to chapter 662, HRS, by section 2, which would allow neighboring landowners to enter state-owned land to make repairs themselves, or through their agents, if the Department of the Attorney General fails to respond to their complaint within thirty days. Under this provision, the neighboring landowners would be doing repair work on state land without oversight by the state agency that owns that land. This could create additional exposure for the State if the repair work undertaken by the neighboring landowner is negligently performed and causes damage to other neighboring landowners or the state land itself.

Also a neighboring landowner already has the ability to sue the State for premises liability in most instances. If a condition on state land constitutes a nuisance, the landowner (or any aggrieved person) can sue the State under the tort of nuisance. If a condition on state land causes damage to a neighboring landowner or other person using the state land, the aggrieved person can sue the State for premises liability in most instances.

Because the term "neighboring landowner" is not defined, there could be unintended consequences as to scope of land that a person can complain about under this bill. The bill appears to be aimed at addressing the situation where a person's home borders on a small piece of state land in an otherwise developed setting. There may be a problem when this bill is applied to undeveloped land, such as upslope land on a mountain. It is currently unclear if a landowner who lives in the last lot of a residential community that borders on a mountain would have the ability under this bill to sue for conditions throughout the entire mountain range. The landowner could argue that because they are the "neighboring owner" to a large tract of state land.

Another challenge is that this bill does not currently address the standard of proof the neighboring landowners must show to establish that the State breached one of its provisions, such as how overgrown a tree or plant must be for it to be considered a breach and what is meant by “a clean and safe condition” when you apply that to undeveloped land upslope on a mountain.

A perhaps unintended consequence of this bill as currently drafted is that in attempting to legislate all state land it forces the Department of the Attorney General to manage the various state agencies that own the land. In the notice provision, which is subsection (c) of the new section set forth in section 2 of the bill, on page 3, beginning on line 3, the neighboring landowner notifies the Department of the Attorney General of an alleged breach. But the Department of the Attorney General does not own any state land that would be impacted by this bill. Instead the Department of the Attorney General would need to determine which agency owns that land, and then notify that agency of the complaint from the neighboring landowner. That communication could be the first time the agency learns of the concern. Adding to the challenge is that this bill gives the Department of Attorney General as little as thirty days to respond to the neighboring landowner. Before that response, though, this Department would have to contact and consult with the affected state agency, someone in that agency must travel to the property to assess the alleged condition, determine whether a problem exists, and get a final determination as to how to handle the condition.

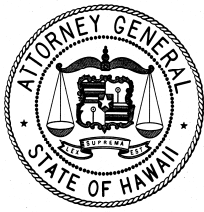
Even if the notice provision was directed at the state agency that owns the land in question, thirty days may not be enough time for the state agency to identify the problem, determine the best course of action, and make a repair. Much state land is inaccessible and would be difficult for work crews to access to assess the problem and make a repair.

Finally, the appropriation section (section 3) is unclear as to which state agency the funds will be appropriated. The respective state agencies that own the land will need the funds to make repairs. The state agencies would also need to hire additional personnel to monitor and maintain these large tracts of undeveloped land. This bill is silent as to where the money gets appropriated. Each state agency that owns land

would need their own budget for improvements under this bill and personnel to perform those improvements. These costs to the state agencies will be large.

It is also unclear from where the funds would come if the Department of the Attorney General were to “remedy the breach by” paying “the landowner a specified sum,” pursuant to subsection (c)(3)(A), on page 3, lines 13-15. The bill as presently worded does not indicate if these funds come from the Department of Attorney General’s budget, general fund monies, or some other source.

We respectfully request that this bill be held. Thank you for the opportunity to testify.



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DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER & LAND**

**Friday, February 3, 2017
9:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1497
RELATING TO STATE LANDOWNER LIABILITY**

House Bill 1497 proposes to: (1) establish a cause of action for neighbors of state lands that have not been properly maintained; (2) authorize compensation for damages incurred by the State's breach of duty and, if applicable, costs incurred by a neighbor who repairs state property that has not been maintained, and (3) appropriate funds for necessary maintenance of state lands. **The Department of Land and Natural Resources (Department) opposes this bill and provides comments.**

The Department has stewardship over 1.3 million acres of Hawaii's public lands, the vast majority of which are in the conservation district. One million acres (a quarter of all the land in Hawaii) is designated as Forest Reserves, Wildlife Sanctuaries, Natural Area Reserves as well as 50 state parks on over 30,000 acres on five islands. The urban development that has occurred over the past twenty years along the boundaries of these areas has resulted in miles of wildland-urban interface.

Most of the lands that the Department has kuleana over are unimproved forested areas and in some cases nearly inaccessible or extremely expensive for work crews to monitor and maintain. In addition, nature is a force unto itself and natural disasters may occur. The Department continues to do its utmost to mitigate this as much as possible, hence the Department's CIP Hazard Mitigation request of \$8,200,000 for Fiscal Year 2018-2019 Statewide.

The Department tries to be a good neighbor in being responsive to requests for maintenance of trees within our jurisdiction. The Department attempts, when possible, to mitigate causing damage to or imposing a nuisance on the adjacent land of neighboring landowners. However,

requiring the State to trim and/or remove all of the forest trees along the Department's wildland-urban interface boundaries would require a significant increase in both operational and personnel costs, and would ultimately result in a reduction in the public benefits provided by our forests through the removal of tree cover. In the last five years alone, Honolulu has lost approximately 5% of its urban forest through tree removal with a corresponding loss of \$200,000 per year in environmental services provided by those trees (including storm water runoff reduction, energy savings, carbon dioxide reduction, air quality improvement, and property value).

The Department has additional concerns as outlined below:

- 1) the logistical and practical impossibility to maintain all State land which includes unimproved lands some of which are inaccessible or nearly inaccessible and the burden it would place on the Department to have to maintain all State land.
- 2) who makes the determination of the action constituting a violation under subsection (b) and that "source of nuisance", "clean and safe condition" and "overgrown" could be subjective to the whomever is making the claim;
- 3) the Department should receive the written notice to remedy first rather than the Department of the Attorney General to provide the Department the opportunity to take corrective action in a timely fashion;
- 4) if the remedy is compensation of a specified sum, would the amount be a standard versus case by case, as the potential of compensation requested would impact the Department's budget;
- 5) if the neighboring landowner elects to repair the condition causing the breach at their expense, would they be subject to procurement in order to receive compensation and if upon entering the State parcel should the neighboring landowner get injured further liability to the State may occur;
- 6) appropriation for tree and vegetation trimming and other necessary maintenance of state lands would be on a continual request rather than just for fiscal year 2017-2018 and 2018-2019 as there is no indication in the measure that this would be a singular or finite event; and
- 7) in addition to a continuous appropriation needed for trimming and maintenance, position requests would need to be included as some Divisions do not currently have the staff or equipment to comply with trimming and maintenance of this type on a continuous basis.

The Department respectfully opposes this bill and suggests that maybe an alternative would be to revise Chapter 520, Hawaii Revised Statutes (HRS), so it applies to government entities as well as private owners rather amending Chapter 662, HRS, with a new section.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON WATER & LAND

FEBRUARY 3, 2017
9:00 A.M.
CONFERENCE ROOM 325

HOUSE BILL NO. 1497
RELATING TO STATE LANDOWNER LIABILITY

Chairperson Yamane and Members of the Committee:

Thank you for the opportunity to provide testimony on House Bill No. 1497. The purpose of this bill is to address state landowner liability by creating a civil cause of action against the State for failure to properly maintain its lands and appropriating funds for necessary maintenance of State lands. The Hawaii Department of Agriculture offers comments on this measure.

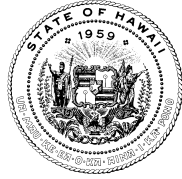
We believe section 2 is unnecessary; however, we respectfully defer the legal aspects of this measure to the Department of the Attorney General. The department supports the appropriation of funding for vegetation maintenance provided that it does not impact the Department's priorities identified in the Executive budget.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

SHAN S. TSUTSUI
LT. GOVERNOR
STATE OF HAWAII



JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON WATER & LAND**

IN OPPOSITION

HB 1497 RELATING TO STATE LANDOWNER LIABILITY

February 3, 2017

Aloha Chair Yamane and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) respectfully opposes this bill which establishes a cause of action for neighbors of state lands that have not been properly maintained and authorizes compensation for damages incurred by the State's breach of duty and, if applicable, costs incurred by a neighbor who repairs state property that has not been maintained.

Although DHHL's mission "to develop and deliver land to native Hawaiians" is well-known, the lesser known charge "to manage the Hawaiian Home Lands trust effectively" is equally important. Increasing, this responsibility is demanding a greater share of DHHL's financial and staff resources to address. Of the over 200,000 acres of land, nearly two thirds of DHHL's land inventory (63.3% or 128,721 acres) are lands designated as General Agriculture or Conservation/Special District, which are often located in remote areas. While these lands are unlikely to be located near private homes, the broad reference to state-owned land as provided for in this measure would arguably apply to Hawaiian Home Lands and could violate section 206 of the Hawaiian Homes Commission Act because it bypasses the Hawaiian Homes Commission in allowing others to enter and make alterations to Hawaiian Home Lands without the Commission's approval. In light of these concerns, DHHL respectfully requests that this Committee defer or hold this bill.

Thank you for your consideration of our testimony



HB1497
RELATING TO STATE LANDOWNER LIABILITY
Committee on Water & Land

FEBRUARY 3, 2017 9:00 a.m. Room 325

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees offer **COMMENTS** on HB1497, which would place a duty of care on the State “to properly maintain any parcel of state-owned land to avoid causing damage to or imposing a nuisance on the adjacent land of neighboring landowners.” **OHA appreciates the issues that may arise for neighboring landowners of state lands, and notes that it is a neighboring landowner of state lands itself; however, OHA questions the means by which this measure seeks to address state land maintenance needs, and the impacts that this measure may have on the State’s ability to properly manage its lands.**

As noted in this measure, the State owns approximately 1,540,000 acres of land, which includes lands abutting private landowners. A substantial majority of these lands are “ceded” and public land trust lands, to be maintained and managed in trust, for the benefit of Native Hawaiians and the general public. The State’s maintenance responsibility for its lands is immense, and spans a wide range of parcels, from urban industrial to pristine conservation lands. The 30-day minimum deadline for the State’s remedy to a neighboring landowner’s complaint disregards the magnitude of the state’s maintenance responsibility over all state lands, and provides little leeway for investigation, response, or planning. The self-help provision would also encourage neighboring landowners to repair conditions on state lands without standards for such repairs, potentially necessitating additional repairs by the State.

As a state agency responsible for land that it holds in trust for Native Hawaiians, OHA recognizes the importance and burden of maintaining its own lands. Given our kuleana, we would expect significant issues for the State, should this bill be enacted.

Mahalo nui loa for the opportunity to testify on this measure.

LATE

kong2 - Crystal

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 8:06 PM
To: waltestimony
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for HB1497 on Feb 3, 2017 09:00AM

HB1497

Submitted on: 2/2/2017

Testimony for WAL on Feb 3, 2017 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Oppose	Yes

Comments: We WHOLLY OPPOSE this bill as it creates a "cause of action" only for a specified class of individuals, to wit: The Property Owner. What about other classes if individuals who suffer at the failings of the State? Furthermore, it must be remembered that the monies that will be paid out in this scheme, is TAXPAYER \$\$\$! Rather than creating a law that will provide a "windfall" (pun intended!), of financial gain for real property owners. Why not create a law that solely punishes the perpetrator, to wit: the State of Hawaii, by cutting the budget of this departments who were negligent, firing heads & or simply sanctioning the offending personnel who failed to do their due diligence in performing their assigned duties. This makes greater sense than having the Hawaiian Taxpayers foot this ridiculous bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

STATE OF HAWAII
Committee on,
Friday, February 3, 2017 at 9:00 a.m.
State Capitol, House Conference Room 325

FROM: Kenrock K. S. Higa
1620 Onipa'a Street
Honolulu, Hawaii 9689

SUBJECT; House Bill 1497: Relating to State Landowner Liability

Aloha Representative Rylan I. Yamane, Representative Sam S. Kong and distinguished members of the Water and Land committee. Thank you for this opportunity to testify on behalf of my entire family with respect to House Bill 1497 relating to Landowner Liability.

The primary intent of this bill is to affect responsible stewardship of State held lands and to mitigate adverse effects of those lands upon neighboring properties.

I am here to ask your support to move house bill 1497 forward for the following reasons. My property borders lands managed by the Department of Land and Natural Resources (DLNR). The community master plan drafted in the late 1950's outlines a drain culvert extending across the entire length of Onipa'a Street. However, for whatever reason the work stopped short and the result has been a burden to my neighbor and self for many years because the culvert does not extend across a protective path to protect our property.

The omission of a culvert has adversely affected our properties structural integrity especially after large deluges in years past. Speaking for myself, I had to raise my home twice due to heavy water channeling off the mountain directly through my property. This is principally due to the absence of the culvert extending to where it should be. My neighbor and I have made barriers to mitigate flooding of our properties. However, the lack of a culvert still presents an adverse condition to our properties.

I am not seeking compensation for past damages to my property. What I am supporting through this House Bill 1497 is responsible State stewardship of lands that had adverse effects upon neighboring properties. Therefore, I strongly support HB 1497 and respectfully request to be a part of ongoing dialog as this bill moves forward.

Mahalo e aloha ke Akua,


KENROCK K.S. HIGA

Michael and Cheryl Flannery
1712 Oheke Place
Honolulu, Hawaii 96819
October 26, 2016

The Honorable David Ige
Governor of Hawaii
Executive Chambers
State Capitol
Honolulu, Hawaii 96813

Re: Recurring Flooding of the Drainage Ditch Located Behind 1712 Oheke Place

Dear Governor Ige,

We are writing to you as citizens concerned about threats to our property and safety as well as that of our neighbors. Large fallen branches and debris from State land continuously clog the drainage ditch behind our home causing flooding issues. Numerous discussions with the State's Division of Forestry and Wildlife have had little or no result.

Flooding caused by a drainage ditch blocked by debris from State land has been affecting our property and adjacent neighbors for nearly two decades, at the very least. If not properly addressed, this intolerable situation will continue wreaking havoc on us, the Laus and Nakagawa home with each heavy rain.

Even before we moved into our house in November 2014, the drainage ditch has continuously overflowed because of impacted branches, debris, dirt and rocks fallen from State land. Some time around 1998 (approximation by Hiram of the City Road Maintenance Division), the City's clogged drain induced localized flooding that caused severe damage to this house and at least two adjacent neighbors, 1674 Onipaa Street owned by Brian Nakagawa and 1668 Onipaa Street owned by Russell Lau.

Hiram also recalls an incident of flooding around 2000. The City should have record of these occurrences, and Russell Lau can provide firsthand information.

Feeling vulnerable and lacking confidence in the government agencies' ability to protect them from the recurring flooding, the previous homeowner and neighbors, at their own expense, erected small walls to shield their homes from the continuous overflow caused by the blocked drain. This measure is now failing as the aging walls are crumbling and particularly because the blockage has gotten severely worse due to the branches and debris accumulating on State land over the years and pushed by heavy rains into the City ditch.

The large branches and debris from the hillside are continuously accumulating. The branches are from trees cut by the State in years past and left on the hillside or dead branches that naturally fall. The dry summer months have caused trees to perish and die, leaving more woody debris. Leaves from all these sources continue to build over the years.

In addition, rain and hillside erosion are causing the vegetation to shift and lean. This is also an issue that must be addressed.

To ensure the personal safety of the Russell Lau family, the Nakagawa home and our family, it is critical that the State land be cleared regularly and especially when heavy rain is expected. The blocked drain poses a flood risk to the houses adjacent to the ditch and other surrounding homes in the path of the water flow.

The situation also poses a safety hazard when the homeowners themselves have no alternative other than to go into the ditch to clear the debris during heavy rains while the Emergency Management Agency or Road Maintenance Division is responding to other calls deemed more urgent. Ultimately we are being penalized for keeping a watchful eye on the situation rather than waiting until the flooding has damaged our properties.

Our experience with the flooding began almost as soon as we moved into the property. In late 2014 (or early 2015), we awoke to find the drainage ditch completely backed up with branches, rocks and other debris after a heavy rain. We contacted the City Road Maintenance Division and were told that a crew would be dispatched when available. After tending to other emergencies, they came out hours later to clear the blockage. Efren, a supervisor, would have specific information. His number is 768-3622.

In 2015, during another heavy rain, numerous bamboo stalks on the hillside fell and landed on the opposite side of the ditch closest to our house.

On July 23, 2016, in anticipation of Tropical Storm Darby, Cheryl Flannery cleared out large branches from the drainage ditch. Russell Lau, our neighbor, had also inspected the ditch around the same time to make sure that it was cleared out prior to Darby.

On July 24, 2016, at approximately 8:45 p.m., Mike Flannery heard a large rumbling that sounded like a landslide emanating from the back of our property. He saw water pouring out from the gate located at the rear of our property, and flooding up to our patio sidewalks.

Mike also saw that the ditch was overflowing because debris blocked the drainage grill. Based on the silt line visible today, the water came up to 16" from the top of our 20" rear rock wall (gate area). In the drain area, it is estimated that the water was over 6' high. Photographs attached.

Our 911 call was connected to the Fire Department. After explaining the situation, the Fire Department said they would contact the Emergency Management Agency. Immediately after, we warned Russell Lau about the situation.

A second call was made to the Fire Department to determine when EMA would respond. HFD said that our situation was not an emergency, so EMA would come out when they could. We told HFD that if something wasn't done, flooding was imminent for our property and the surrounding neighbors. They reluctantly said that a truck would be dispatched when available.

Our neighbor, Russell, attempted to clear the drain himself in the dark of night. As mentioned, his house had been flooded before and he wanted to ensure that history did not repeat itself. Carrying a flashlight and heavy metal groundbreaking stick, he waded through the water and walked along the embankment where the water had subsided. At that point, none of us knew where the drain was located because it was completely under water.

Later 5 to 6 firefighters arrived. Since the rain had lessened momentarily, the water had subsided to the point where it was no longer coming onto our property.

The firefighters told us that they would not do anything because our homes were not flooded. They would not agree to pump the water because they felt it would cause flooding in other areas. We informed them that this would be a reasonable alternative because the water would flow into the street and into the storm drain. This circular discussion went on for a while until a senior firefighter told the others to assist Russell, who alone was still trying to clear the drain.

Working in the extremely dangerous and muddy water, Russell and the firefighters shoveled out large branches, considerable-sized rocks and silt. Photographs attached. They did an outstanding job clearing the drain and stopping a potential catastrophe for many homeowners.

During heavy rains, the State's response units are extremely overwhelmed. Our practice of calling for assistance as soon as we notice the drain backing up puts us low on the emergency responders' priority list. Our experience with Tropical Storm Darby and previous incidents have shown that we cannot depend on the State emergency response units to save our homes during times of crisis.

Rain is an Act of God that cannot be controlled. We understand that. Nothing is done about the branches, rocks, dirt and other debris on State land that inevitably washes into the ditch during heavy rains. Without this problem being addressed, the flooding situation repeats itself again and again. This recurring problem strains City and State resources during emergencies. The situation is preventable with simple maintenance and taking steps to better protect the areas surrounding the ditch.

Heavy rain puts undue stress on our family and neighbors as well all feel that we have to be on alert and constantly monitoring the drain. We fear for our property and safety. We are asking the State to properly maintain their property to avoid these issues and provide the community peace of mind.

Our request is:

- 1) Clear accumulated debris from the embankment surrounding the ditch so that it will not fall into the ditch and clog the drain.
- 2) Cut trees hanging over the ditch to stop debris from falling into the ditch.
- 3) Maintain clearing on a regular basis to reduce costs of maintenance and the risk of flooding.
- 4) Implement erosion control measures.

The responsibility lies with the State and not the private homeowners.

The Honorable David Ige

Page 4

October 26, 2016

In summary, the lack of maintenance of the areas surrounding the ditch creates the following known issues for our community:

- 1) Property damage
- 2) Risk of injury or death
- 3) Drain on State's resources
- 4) Undue stress and concern

Thank you for your time and attention to this matter.

Very truly yours,

Michael and Cheryl Flannery

Enclosures



Large bolder progressing toward ditch. Slides further down with each rain



Debris along embankment will fall in during heavy rains. Debris is from State Trees, branches leaves that cause the initial clogged drain. When the drain is clogged other debris accumulates from flood waters to build up the embankment further. This exaserbates the issue.



Debris from drain removed by Fire Department

Water height perspective



Water height perspective



Rep. Linda Ichiyama,

This testimony is for H.B. #1497, which is scheduled for hearing on 2/3/17.

My name is Randall Tamura and I am testifying in support of H.B. #1497.

I am in support of H.B. #1497 for the following reasons and in chronological order:

1) In January 2011, a crew of four DLNR workers began clearing an area of SOH land adjacent and directly uphill to my property at 1715 Ala Mahamoe St. When questioned of their intentions, the superintendent stated that they were installing a "Hawaiian Garden". I expressed my concerns regarding erosion and was assured that the existing vegetation that they were removing would be replaced.

2) I contacted DLNR in April 2011 and met with Ryan Peralta on April 12, 2011. Attached is his response regarding "restoration project" that his crew. It clearly shows erosion concerns due to DLNR's negligence. **(See attachment #1)**

3) I met with Ryan Peralta on September 8, 2015 regarding potential flooding of my residence. Attached is my letter to you with his reason as to why nothing could be done. Also attached are pictures of erosion into my property as a result of the area being cleared above my property. **(See attachment #2)**

4) Attached is an email I sent to you on August 12, 2016, along with pictures, of erosion of the "Hawaiian Gardens" caused by heavy rains. This erosion is causing damage to my property. **(See attachment #3)**

5) A letter dated October 26, 2016 from Suzanne Case states that my property sits on a bench cut below a **"natural, unaltered slope owned by the State of Hawaii"**. This totally untrue as this is the exact area that DLNR cleared, making it not in a natural unaltered state. Also, mitigating erosion is coming from "improved unnatural land". **(See attachment #4)**

6) On December 28, 2016, I received an email with a response from Suzanne Case. Her response was typical of someone who has no clue as to what's going on. There is no need to quantify erosion rates, just looking at the site is evidence enough as to what's happening. Also, Ryan Peralta's diagram shows slope

direction, which clearly shows direction of erosion. In addition, his letter to Marigold S. Zoil clearly shows that the State of Hawaii is responsible for this erosion.

In closing, my position is that the State of Hawaii is solely responsible for the erosion and damage that is causing devaluation to my property, in addition to additional cost incurred by myself to rectify this problem caused by the SOH's ineptness. **Attachments #6 / #7 / #8** are evidence of my property prior to the State of Hawaii constructing their so-called "Hawaiian Garden".

Randall Tamura

1715 Ala Mahamoe St.

Honolulu, Hi 96819

(808) 479-8792

Attachment #1

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Forestry and Wildlife – Oahu Branch
2135 Makiki Heights Drive
Honolulu, Hawaii 96822
Phone: 808-973-9779 | Fax: 808-973-9781

April 12, 2011

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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Mr. Randy Tamura
1715 Ala Mahamoe Street
Honolulu, HI 96819

Dear Mr. Tamura,

Thank you for taking the time to meet with me today. Your concerns regarding the restoration project in the Honolulu Forest Reserve, Moanalua Section on Ala Mahamoe Street are valid. They are, in no order of significance:

- 1) The erosion of dirt off the hillside that is running onto the sidewalk,
- 2) The total denuding of grass in the tree planting area, and
- 3) The unsightly rubbish bags piled on the hill.

To address the erosion of the dirt, we plan to install coconut coir logs or some sort of erosion barrier along the top of the hill side. This will serve as a catchment to contain water and mud as it tries to run off the slope.

To address the exposed bare soil, we plan on one or a combination of options:

- 1) Allow the grass to grow back and cut it periodically so it does not strangle the planted trees,
- 2) Install weed barrier mats, or
- 3) Top dress the area with mulch.

Additionally, we shall not plant any more trees or remove any more vegetation beyond the furthest planted trees closest to your house.

To address the rubbish bags, we shall send a crew up there as soon as possible to either remove them or have them stashed uphill and out of sight. We plan to reintroduce the contents of the bags as mulch material for the tree planting area. I apologize for leaving the water jugs and the shade cloth on site. All tools, equipment and rubbish will be taken back to the baseyard at the end of each working day.

Finally, we will do our best to clean off the dirt from the side walk and cut the grass along the sidewalk again.

Feel free to contact me should you have any questions or concerns.

Mahalo,

A handwritten signature in cursive script that reads "Ryan K. Peralta".

Ryan K. Peralta
Forest Management Supervisor I

CC: David G. Smith, Oahu Branch Manager
Timothy Morrill, Forestry and Wildlife Technician IV

Attachment #2

Randall Tamura

From: Randall Tamura
Sent: Wednesday, September 30, 2015 5:36 AM
To: lindaichiyama@gmail.com
Subject: 1715 Ala Mahamoe St.
Attachments: Untitled; Untitled

Good morning Rep. Ichiyama,

I met with Ryan Peralta on 9/8/15 regarding potential flooding of my residence. I have attached some photos of the situation. Also, the brush and kiawe trees are growing into my property.

According to Mr. Peralta, he cannot do anything about the situation due to lack of funding. A couple of days after our meeting, he sent a worker to clear some the overgrowth at the corner of my lot and also moved some rocks back up the hill, but, that's about it.

At your convenience, I would like to set up a meeting as the rainy season is coming up and the last thing I need is for my house to get flooded. I would think that it's much more economical to rectify the situation rather than pay for flood damage to my home.

Please feel free to call me at 479-8792 or email me.

Thank you,
Randy







Attachment #3

Randall Tamura

From: Randall Tamura
Sent: Friday, August 12, 2016 7:18 AM
To: lindaichiyama@gmail.com
Subject: 1715 Ala Mahamoe St.
Attachments: Untitled; Untitled; Untitled; Untitled

Representative Ichiyama,

Attached are photos of the portion of my yard that abuts property owned by DLNR.

One photo is of the run-off from the mountainside during heavy rains. Due to build of dirt in my yard, the elevation of the grassed higher is much higher than it was originally. Originally, it was at the same elevation as the concrete culvert that we constructed. Now, it is over 4" higher and very difficult to maintain, thus, this area that was at one time, well kept, is not very nice anymore.

Also, there is a kiawe tree that is located on DLNR property, but, the branches have overgrown and infringes into my property. The bucket is the property line (10' from house) and the branches are very close to my eaves. These branches are thorny and if they fall to the ground, it's very dangerous. Due to these two issues that are being caused by DLNR property, it is a liability that prevents my grandchildren from walking and playing along that side of my property.

I have also includes photos of the run-off along Ala Mahamoe St. You stated in a previous email that government workers will recify the situation, but, all they did was shovel a small quantity back along the slope and when another rain comes, it washes right back to the same location.

Being a taxpayer and contributing to their wages, I feel they are wasting our tax dollar. Please have them do something productive.

Thank you,
Randy







Attachment #4

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 26, 2016

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ms. Linda Ichiyama
Hawai'i District 32 Representative
Hawai'i State Capitol, Room 327
Honolulu, Hawaii 96813

Re: Response to Mr. Randall Tamura's complaint about erosion and vegetation encroachment from State Forest Reserve land.

Dear Representative Ichiyama,

This letter is in response to your letter dated September 9, 2016 regarding Mr. Randall Tamura's complaint about encroaching vegetation and erosion in the Ala Mahamoe area of Moanalua.

Mr. Tamura's property sits on a bench cut lot below a natural, unaltered slope owned by the State of Hawai'i. The Department's Division of Forestry and Wildlife (DoFAW) has been in communication with Mr. Tamura over the past five years regarding his concerns. Additionally, in preparation for this response, DoFAW's Oahu Branch Manager conducted a site visit of the area.

Below please find our responses to the issues outlined in your letter:

- 1) Restore his property to its original elevation before the erosion and restore landscaping to its original state:

Mitigating erosion coming from unimproved natural lands is the responsibility of the homeowner affected. The State is not responsible for clearing or maintaining privately owned land.

- 2) Remove kiawe tree that is encroaching onto his property:

The kiawe tree mentioned does not constitute a hazard. Mr. Tamura is free to cut vegetation encroaching onto his property with a permit issued by DoFAW.

- 3) Plant more native plants instead of allowing vegetation to grow:

DoFAW is supportive of planting native plants; however, with limited resources, the Division does not rank this as a priority action at this time.

- 4) Provide an answer to why the "Hawaiian garden" was installed when there were no erosion problems on that portion of the mountainside:

The Hawaiian garden was installed with the intention of demonstrating the potential of reforesting the area with native plants. The plants are providing a watershed and educational function.

- 5) Address the erosion and flooding problems that are causing debris and run-off onto his property and Ala Mahamoe Street:

Erosion coming from unimproved lands is the responsibility of the homeowner affected. The State is not responsible for clearing or maintaining privately owned land. DoFAW is interested in working with the City and County of Honolulu on resolving the erosion issues in this area.

We encourage private landowners to partner with the State to reduce negative impacts they may experience from living adjacent to natural, public lands on their private property by providing technical assistance and, in many cases, permits to conduct otherwise prohibited activities (i.e., cutting vegetation in a Forest Reserve).

Please contact Ms. Marigold Zoll, Oahu Branch Manager, at 808-973-9787 or Marigold.S.Zoll@hawaii.gov if you have any questions or concerns.

Sincerely,



Suzanne D. Case
Chairperson

Attachment #5

Randall Tamura

From: Rise Doi <r.doi@capitol.hawaii.gov>
Sent: Wednesday, December 28, 2016 4:06 PM
To: Randall Tamura
Cc: Rep. Linda Ichiyama
Subject: FW: DLNR Response to Rep Ichiyama's 11/4/16 ltr
Attachments: Rep Ichiyama ltr 12-28-16.pdf; Doc2.pdf; Ala mahahmoe erosion memo.pdf

Aloha Mr. Tamura,

I hope this message finds you well. Please find attached for your review DLNR's response to the letter our office had sent on 11/4/16. I have also attached Ryan Peralta's map where he assessed the erosion and his memo.

Mahalo,

Risé Doi
Office of Representative Linda Ichiyama
415 South Beretania Street, Room 327
Honolulu, HI 96813
Phone: 808-586-6220

From: Levins, Sara D [<mailto:Sara.D.Levins@hawaii.gov>]
Sent: Wednesday, December 28, 2016 11:29 AM
To: Rise Doi <r.doi@capitol.hawaii.gov>
Subject: DLNR Response to Rep Ichiyama's 11/4/16 ltr

Aloha Rise –

Please see DLNR's response to Rep Ichiyama's letter of 11/4/16 re Mr. Tamura's request for clarification regarding the contribution of the native plant restoration area (Hawaiian Garden) to erosion at his property.

Mahalo – and Happy New Year!

Sara Levins

Assistant to Chair
State of Hawaii
Department of Land & Natural Resources
1151 Punchbowl St., Rm. 130
Honolulu, HI 96813
808.587.0401 (ph)

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 28, 2016

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Honorable Representative Linda Ichiyama
District 32, Hawaii State Capitol 327
Honolulu, Hawaii 96813

Dear Representative Ichiyama:

Re: Erosion impacting Mr. Randall Tamura Property

This letter is in response to your letter dated November 4, 2016 regarding Mr. Randall Tamura's request for clarification regarding the contribution of the native plant restoration area (Hawaiian garden) to erosion at his property.

The impact of the restoration project on erosion at this site is difficult to quantify as there are multiple factors that contribute to erosion rates and without regular monitoring at the site, it is difficult to say whether it is increasing or decreasing, and what the probable causes are. Considering that the prior condition of the area was low stature trees with a ground cover and that the area is now the same but with a different assemblage of species, it seems that the impact of vegetative cover on the erosion rate of the site is the same as before the planting. There may be other factors such as rainfall rate and intensity that are impacting the erosion rate and are unrelated to the site vegetative condition.

Additionally, the previous owner, Mr. Tamura, Sr., must have experienced erosion and runoff issues from the same area, as he installed a drainage ditch along his property boundary before the Department purchased the property.

Prior to implementation of the restoration project, the forest cover consisted of an understory of non-native grasses and shrubs with a *Leucaena leucocephala* (koa haole) over story. In 2011, a 3,000 square foot area was cleared by hand and a mix of native understory and overstory plants were planted. A vegetative buffer ranging from 10' wide to 50' wide between the private property and the restoration area comprised of a mix of non-native grass and haole koa was left undisturbed. During the planting phase of the project, there may have been an increase in erosion due to the lack of ground cover at the site. However, the planted native vegetation has since grown to a canopy of similar or greater height with an assortment of native and non-native understory plants providing ground cover once again. The current state of the site is similar to the condition found prior to the planting.

Please contact Ms. Marigold Zoll, Oahu Branch Manager, at 808-973-9787 or Marigold.S.Zoll@hawaii.gov if you have any questions or concerns.

Sincerely,

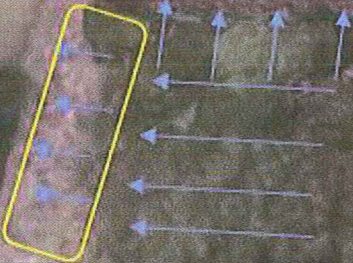

SUZANNE D. CASE
Chairperson

1715 Ala Mahamoe Street

Native Plant Restoration Area

Blue arrows indicate slope direction

Vegetative Buffer



State of Hawaii
Department of Land and Natural Resources
Division of Forestry and Wildlife
2135 Makiki Heights Drive
Honolulu HI 96822
Ph: (808) 292-5645 – Fax: (808) 973-9781



December 14, 2016

MEMORANDUM

TO: Marigold S. Zoll, Oahu Forestry and Wildlife Manager
FROM: Ryan K. Peralta, Forestry Management Supervisor I, Oahu Branch
SUBJECT: 1715 Ala Mahamoe Street, Mr. Randall Tamura, Erosion Complaint

Aloha,

It was requested that I map the Hawaiian garden on Ala Mahamoe Street, show where the run off would go and assess potential impacts to his property. See attached for map that depicts the slope direction.

Initially, the tactics employed for the restoration work targeted 100% of the understory for eradication to limit the competition for the plantings. This resulted in bare soil with no cover over it. This is conducive of erosion and may have impacted adjacent properties. Although there is a buffer of tall grass between the restoration area and adjacent property, erosion and runoff could have still occurred. However, these tactics were used by an employee who has not been working with us for several years and we have since adjusted our strategy.

As of today, the understory has mostly recovered and the buffer of tall grass remains. While the dominant slope is angled toward Mr Tamura's property, it seems likely that future erosion should be dramatically diminished. Incidentally, the sidewalk along Ala Mahamoe suffers from constant erosion from the hill slope even though no restoration work was attempted. Therefore, it is reasonable to assume that erosion will occur all over this area as a result of natural processes and is not necessarily human caused. See photos.

Untitled Map

Write a description for your map.

Legend

Attachment #6



Untitled Map

Write a description for your map.

Attachment #7

Legend



Untitled Map

Write a description for your map.

Legend

Attachment #8



LATE

kong2 - Crystal

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 8:08 PM
To: waltestimony
Cc: rkailianu57@gmail.com
Subject: Submitted testimony for HB1497 on Feb 3, 2017 09:00AM

HB1497

Submitted on: 2/2/2017

Testimony for WAL on Feb 3, 2017 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Oppose	Yes

Comments: Why is general funds/tax payers eating the cost for this liability? Doesn't the State department responsible for such lands have a budge by which is supposed to be used to maintain, repair, fix, or compensate these liability claims? What else will the tax payer be paying for because of the state's negligence?

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov