



## Press Release

### Hawai`i Supreme Court Issues Landmark Decision on Public Access to Beach

*Shoreline reaffirmed at highest wash of waves; use of induced vegetation rejected*

**October 25, 2006**

**Honolulu, HI** -- The Hawai`i Supreme Court has issued a ruling strongly reaffirming that the shoreline in Hawai`i, which marks the boundary between public beach and private land, extends to the highest wash of the waves, and rejecting the use of artificially planted vegetation to determine the shoreline. The case on appeal, *Diamond v. State*, involved a challenge by North Shore Kaua`i residents Caren Diamond and her attorney, Harold Bronstein, of the decision of the Chairperson of the state Department of Land and Natural Resources (DLNR) to certify the shoreline of a lot on Kaua`i's North Shore based on vegetation the landowner planted and propagated to create a false shoreline further makai (seaward). Earthjustice, on behalf of citizen groups Public Access Shoreline Hawai`i and Sierra Club, Hawai`i Chapter, filed an amicus brief in support of Diamond and Bronstein's appeal.



Photo: EPA

The court, in a unanimous decision, reversed the state's decision and held that the shoreline should be established "at the highest reach of the highest wash of the waves." In so ruling, the court reaffirmed its long-standing precedent from the late-60s and early-70s, in which the court established the shoreline at the high water mark, "usually evidenced by the edge of vegetation or the line of debris left by the wash of the waves." In recent years, the state and landowners misinterpreted this precedent to emphasize use of the vegetation line as the shoreline, even when the debris and wash of the waves extended further inland. The court's latest decision rejected this misinterpretation and confirmed that the ultimate measure of the shoreline is the high water mark.

The court also clarified the role of the "vegetation line" and "debris line" as indicators of the shoreline. The court ruled that the vegetation line trumps the debris line only when the vegetation line lies "more mauka" (inland) than the debris line and furthers the public policy of "extending to public ownership and use as much of Hawaii's shoreline as is reasonably possible."

The court also ruled that the state erred in using artificially planted and propagated vegetation to determine the vegetation line based on the reasoning that the vegetation survived more than a year. The court cited the public policy of protecting shoreline resources and extending public shoreline uses and emphatically "reject[ed] attempts by landowners to evade this policy by artificial extensions of the vegetation lines on their properties."

"I am pleased that the Court acknowledged the principles we have been articulating all these years," said Caren Diamond, who, together with Bronstein and other community members, have resisted attempts by landowners to extend their lots onto public beach with artificially planted vegetation. "Now, our government officials need to start enforcing the law and stop vegetative encroachments that are causing the loss of our sandy beaches."

The court's decision follows on the heels of the state's recent amendment of agency rules, effective June 2006, to remove any preference for the vegetation line over the debris line in the determination of shorelines, an issue first raised years ago by Diamond and Bronstein in their challenges to the location of certified shorelines. The rule amendment was the product of a settlement of a lawsuit brought in 2005 by Earthjustice on behalf of citizen groups Public Access

Shoreline Hawai`i and Sierra Club, Hawai`i Chapter. The state rendered its decision in the Diamond case in 2004.

"We appreciated the opportunity to work with Chair Peter Young and DLNR to fix the problem of the agency's shoreline definition," said Earthjustice attorney Isaac Moriwake. "However, landowners still persist in planting vegetation and calling it the shoreline. This ruling sends a clear message that the game is over."

In recent years, intensifying public controversy has focused on the ongoing loss of beaches statewide caused by coastal development too close to the ocean. One of the leading concerns is the widespread use of induced vegetation by landowners and surveyors to manipulate the shoreline further makai and to justify building closer to the ocean. This not only invades public beach and blocks public access, but also paves the way to the eventual erosion and loss of the beach, ironically to the detriment of the landowner as well as the public. According to coastal geologists, one-fourth of Oahu's beaches and one-third of Maui's beaches have already been lost, largely because of development too close to the ocean.

"The supreme court's ruling vindicates the public's rights to shoreline access and use," said Jeff Mikulina, Executive Director of the Sierra Club, Hawai`i Chapter. "But we still need our state and county officials to get serious about protecting these rights from getting buried under walls of vegetation and concrete."

"I applaud the tireless, personal efforts of Ms. Diamond and other citizens across this state seeking to defend the public's right of beach access," said Claudia Rohr, board member of Public Access Shoreline Hawai`i. "This victory belongs to them, as well as all the people of Hawai`i."

[Read the court's decision](#)

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