

Ocean



PHOTO: JEFF HELBERG

Beach of Burden

Diamond Head property owners and the state have been squabbling over beach ownership for years, leaving the public with reduced access and wet feet.

It's a given that Hawaii has some of the best beaches in the world; a less recognized fact is that the laws governing those beaches are some of the most progressive in the world — in Hawaii the public has access rights to each and every one of the Islands' beaches, a right protected by the state constitution.

But there's one parcel of land on Oahu's coast where this idea is being challenged. Some owners of prime beachfront property near Diamond Head say they own a certain strip of beach that separates their houses from the sea, and over the years they have extended their yards, planted lawns and coconut trees and built seawalls and fences on the land in question. And, though the courts have repeatedly ruled that the beach is public property (and even at one time threatened to fine the owners, a sum that if imposed would total \$360,000 by the end of this March), the state has not moved to penalize the landowners.

The strip of land at issue is part

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of Kaalawai Beach; it ranges from 20 to 40 feet in width and runs from the point at which Kulamanu Place (near Black Point in Kahala) meets the shoreline toward Diamond Head for about four-fifths of a mile.

If you walk from Diamond Head toward the beach on Kulamanu Place at high tide, you may well encounter fishermen or surfers headed out for Kaiko'os or Mansions. One thing you won't encounter is the beach. That's because when the tide is high, the sea slaps right up against those private seawalls.

Richard Kelley, owner of the Outrigger Hotels chain, is one of the property owners in the area — in fact, he owns roughly 25 percent of the property here. "I believe there's good public access," Kelley says, referring to the remaining narrow strip of sand that fronts his and his neighbors' property. "If you're dressed in street clothes, you might get your feet wet at high tide, but if you're dressed to go fishing or surfing, you don't really care about getting wet."

That attitude makes some people, who say the landowners have diminished access on the beach, leaving the public with little to no transit space, angry. Two weeks ago, City Councilman Andrew Miritani introduced a resolution into the council urging the state to reclaim the land for the public's use "expeditiously."

The dispute over the land is not new: the precious 20 to 40 feet has been argued over since the late 1950s, when the Lunalilo Estate sought to claim ownership of the land (which was then appraised at about \$1 million). At that point the state attorney general's office denied the estate's claim, arguing the land belonged to the Territory because it was the former site of a public road, the old government road, which had been used by the public for more than a century.

The Kelleys entered the picture in 1968, when Roy and Estelle Kelley (Roy is Richard's father) tried to claim ownership of the property. Their case went all the way to the state Supreme Court where once again the road was recognized as public property. Judge William Richardson, who authored the opinion for the unanimous decision, wrote, "there existed a public road of which the disputed parcel was a part... and the disputed parcel was then made property of the Government by the Highways Act of 1892... Therefore the Kelleys do not have good title and cannot register the land."

Despite the ruling, the property owners continued to build walls and fences on the land and the state did nothing to stop them. Then, in the mid-1980s, one of the area's property owners, Stephen Santangelo, replaced a chain-link fence on the disputed land.

The fence caught the attention of

a group called Save Our Beach, whose ranks included Andrew Miritani and his brother Richard. The group blew the whistle on Santangelo, citing the 1968 Supreme Court decision and arguing that the fence was atop public land.

At that point some of the area property owners sought to solve the problem by buying or leasing the stretch of land from the state, a clear violation of the state constitution's clause on beach ownership. A petition put together by Save Our Beach, which garnered nearly 2,000 signatures, protested any sale or lease of the beach to the private owners. The state, under public pressure, issued notices to the landowners that they would be given a "revocable" permit (for landscaping and residential purposes) while plans on managing the beach were made.

Kelley and some of the other landowners stuck to their convictions and continued to insist the state had no right to the land. But they also indicated that they were willing to make a deal. Today, Kelley says, "We wanted to compromise, but the State wrote us nasty letters and threatened fines."

The "nasty letters" sent to owners stated that if there was no response from the landowners about the permits, then there was no alternative but for the state to give "notice to vacate said lands and to remove all structures and personal belongings placed thereon." Fines were threatened for violating state law by having structures such as fences, patios, trees and retaining walls on the property.

By 1987, seven of the landowners decided to comply and agreed to give part of their yards back to the state. Others, including Kelley, wanted to take the matter back to court.

John Magoon Jr, the former chairman of the board of Hawaiian Airlines, is one of the landowners in the area. In an attempt at compromise, he proposed pulling back his fence a short distance, if the state would drop the encroachment charge. But Sen. Mary-Jane McMurdo and Reps. Mike Crozier and Sam Lee spoke against making such a deal and reconfirmed a resolution the

Continued on Page 7