

REPORT TO THE TWENTY-FIFTH LEGISLATURE  
2010 REGULAR SESSION

RELATING TO PUBLIC LAND LIABILITY  
AND  
RECOMMENDATIONS OF THE  
TASK FORCE ON BEACH AND WATER SAFETY



PREPARED BY THE:  
DEPARTMENT OF LAND AND NATURAL RESOURCES

In response to:  
Section 4 of Act, 82, Session Laws of Hawaii 2003  
as amended by  
Act 81, Session Laws of Hawai'i, 2009

and

In response to:  
Act 190, Session Laws of Hawai'i, 1996  
as amended by  
Act 101, Session Laws of Hawai'i, 1999  
as amended by  
Act 170, Session Laws of Hawai'i, 2002  
as amended by  
Act 152, Session Laws of Hawai'i, 2007  
as amended by  
Act 81, Session Laws of Hawai'i, 2009

November 2009

## **RELATING TO PUBLIC LAND LIABILITY**

### **Purpose**

This report has been prepared in response to Section 4 of Act 82, Session Laws of Hawaii (SLH) 2003. Act 82, SLH 2003, established a risk assessment working group comprised of both state and county officials, and a person knowledgeable in signs, required that a report be submitted with recommendations and the consultation provided to the Board of Land and Natural Resources (Board), including a list of warning signs, devices, and systems on improved and unimproved public lands subsequently approved or disapproved by the Board, to the Legislature.

### **Pertinent Actions**

As reported in last year's annual report, members of the Risk Assessment Working Group (RAWG) conducted public informational meetings statewide to solicit input on the proposed design of the signs. In 2006, the Department of Land and Natural Resources (Department) adopted Hawaii Administrative Rules (HAR) Chapter 13-8 for the Design and Placement of Warning Signs on Improved Public Lands (Chapter 13-8, HAR). Between 2006 and 2008, the Board approved warning signs for numerous locations throughout the state.

### **Recommendation**

There is now a consistent process for natural hazard evaluation and appurtenant sign designs to clearly warn the public of exposure to five re-occurring natural conditions: flashfloods, falling rocks, submerged objects in streams, cliffs, and on a site specific location – hazard trees. HARs have been promulgated that eliminate ambiguity about the design and placement of warning signs. Both state and county governments have institutionalized this process.

There are 63 public locations across the State – comprised of state and county parks and Division of Forestry and Wildlife, Na Ala Hele Trails – that have been evaluated for potentially hazardous natural conditions and warrant Act 82, SLH 2003, signage. Public funds for the layout and production of signage and appurtenant installation hardware have been expended and signs have been installed at state parks and along Na Ala Hele Trails and Accesses between 2008 and 2009. A list of the sites and types of signs follow this report. Kauai County and the City and County of Honolulu have identified locations at county parks and have installed warning signage.

The Department is creating a database for state trail and park warning sign locations. The Department's Division of Forestry and Wildlife is tracking staff time costs via timesheet reports on natural hazard evaluation, and sign installation, inspection and replacement.

Act 82, SLH 2003, strikes a reasonable balance between the government's duty to warn of potential exposure to a hazardous natural condition – and the public's responsibility to heed that risk and make an informed choice to access the public land.

Therefore, it is recommended that the 2014 “sunset” date on Act 82, SLH 2003, as amended by Act 81, SLH 2009, be repealed, (similarly as did the Legislature to Act 190, SLH 1996, relating to beach warning signs in 2008) and that Act 82, SLH 2003, be codified into the Hawaii Revised Statutes as permanent law.

**Location, Number and Type of Act 82, SLH 2003, Installed Signs:**

**OAHU**

Sacred Falls	3 Area Closed Signs 1 Danger Falling Rocks
Nuuanu Pali Lookout	4 Danger Falling Rocks
Diamond Head State Monument (Summit Trail)	5 Warning Falling Rocks
Judd Trail/Jackass Ginger Pool	2 Warning Flash Flood 1 Danger – No Diving
Kulana’ahane Trail	1 Warning Flash Flood 1 Warning Hazardous Cliffs
Kealia Trail	2 Warning Falling Rocks
Maakua Gulch	1 Warning Flash Flood 1 Warning Falling Rocks
Manoa Cliff Trail	3 Hazardous Cliffs
Manoa Falls	2 Warning Flash Flood 2 Warning Falling Rocks
Pauoa Flats Trail	1 Warning Hazardous Cliffs
Poamoho Trail	1 Warning Hazardous Cliffs
Waimano Trail	2 Warning Flash Flood 2 Warning Hazardous Cliffs
Wiliwilinui Trail	1 Warning Hazardous Cliffs

**KAUAI**

Nounou East Trailhead	1 Warning Hazardous Cliff
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Nounou West Trailhead	1 Warning Hazardous Cliff
Keahua Arboretum	1 Warning Flash Flood 1 Danger – No Diving or Jumping
Awaawapuhi Trailhead	1 Warning Hazardous Cliff
<u>HAWAII</u>	
Mauumae Trail	2 Warning Flash Flood
<u>MAUI</u>	
Kula Forest Reserve	23 Warning Falling Trees
Kearae Arboretum	3 Danger – No Diving or Jumping 3 Warning Flash Floods
Ohai Loop Trail and Overlook	2 Warning Hazardous Cliffs

## RECOMMENDATIONS OF THE TASK FORCE ON BEACH AND WATER SAFETY

### BACKGROUND

This report has been prepared pursuant to Act 190, Session Laws of Hawai'i (SLH) 1996, mandating annual reporting by the Task Force on Beach and Water Safety.

Act 190, SLH 1996, established a process for the State and Counties to provide both meaningful and legally adequate warnings to the general public of extremely dangerous natural conditions in ocean areas adjacent to their respective public beach parks. The Act recognized a duty to warn specifically of dangerous shorebreak or strong current in the ocean fronting a beach park, if either condition exists, is extremely dangerous, is typical for that beach park, and poses a risk of serious injury or death. Act 190, SLH 1996, clarified that the State and Counties have no duty to warn of dangerous natural conditions at beaches, beach/coastal accesses or areas that are not public beach parks.

Act 190, SLH 1996, provided for a process, including record keeping, to replace vandalized, removed or illegible warning signs. In addition, Act 190, SLH 1996, called for the formation of a Task Force on Beach and Water Safety to advise the Chairperson of the Board of Land and Natural Resources prior to the Chairperson making a decision on the design and placement of warning signs erected pursuant to this Act. The Task Force on Beach and Water Safety was convened after water safety officer participants were solicited via their respective County Mayors and formally appointed by Governor Benjamin Cayetano pursuant to the Act 190. Other Task Force members were seated by their government position as provided in the Act and had their appointment continued in August 2002.

Act 101, SLH 1999, amended Act 190, SLH 1996, by extending its mandate through June 30, 2003. Act 170, SLH 2002, subsequently amended Act 101, SLH 1999, by extending its mandate through June 30, 2007. The 2007 Legislature passed out legislation that was signed into law as Act 152, SLH 2007, which among other things, removed the sunset date for Act 190, SLH 1996, making it permanent.

### TASK FORCE ON BEACH AND WATER SAFETY MEMBERS

The members of the Task Force on Beach and Water Safety are as follows:

Laura H. Thielen, (Task Force Chairperson), Chairperson, Board of Land and Natural Resources

Ted Liu, Director, Department of Business, Economic Development, and Tourism

Chris Measures, Chair, Department of Oceanography, University of Hawai'i

Marian Feenstra, Chief, Aquatics Division, Department of Parks and Recreation, County of Maui

David Kalani Vierra, Ocean Safety Bureau, Kaua'i Fire Department, County of Kaua'i

Ralph Goto, Director, Ocean Safety & Lifeguard Services Division, Department of Emergency Services, City and County of Honolulu

Clint Coloma, Battalion Chief, Fire Department, County of Hawai'i

Designees were:

Daniel S. Quinn (for the Chairperson, Department of Land and Natural Resources), Administrator, Division of State Parks, Department of Land and Natural Resources

Richard Grigg (for the Chair, Department of Oceanography, University of Hawaii) Marine Biologist, Department of Oceanography, University of Hawai'i

In October 2007, Laura Thielen was confirmed as the Chairperson of the Board of Land and Natural Resources. By virtue of that position, Ms. Thielen is now the Task Force Chairperson. All other members of the Task Force were reappointed, with the exception of Larry Davis who was replaced by Clint Coloma, Battalion Chief, as the ocean safety responsibilities for the County of Hawaii have been transferred from the Department of Parks and Recreation to the Fire Department.

### ACCOMPLISHMENTS

Since late 1996, as reported previously, the Task Force on Beach and Water Safety has accomplished the following:

- Designed signs to warn of "strong current" and "dangerous shorebreak";
- Prepared guidelines for permanent sign placement;
- Placed "strong current" and "dangerous shorebreak" signs, where warranted, at State and County beach parks;
- Designed signs to warn of other extremely dangerous natural conditions in the ocean adjacent to a public beach park:

high surf  
sudden drop-off  
man-o-war  
sharp coral  
rip currents

waves break on ledge  
slippery rocks  
jellyfish  
shark sighted

- Prepared guidelines for temporary sign placement

#### SUMMARY OF TASK FORCE ACTIVITIES

There has been no activity since last year's reporting.