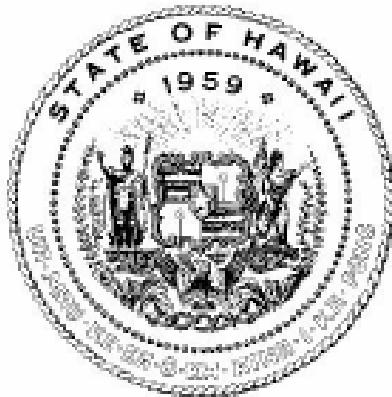


REPORT TO THE TWENTY-EIGHTH LEGISLATURE
2016 REGULAR SESSION

USER CONFLICTS ON PUBLIC RECREATIONAL LANDS



Prepared by:
STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES

In response to:
ACT 145, SESSION LAWS OF HAWAII 2014

October 2015

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USER CONFLICTS ON PUBLIC RECREATIONAL LANDS

BACKGROUND

Act 145, Session Laws of Hawaii 2014 (Act), directs the Department of Land and Natural Resources (Department) to:

1. Convene a working group on the Island of O‘ahu to identify and implement management strategies for the resolution of user conflicts on public recreational lands; and
2. Select one public recreational area to be the focus of the working group, provided that the recreational area shall have a history of user conflicts.

The working group shall be comprised of:

1. One representative from each appropriate state and county agency that has partial jurisdiction over the subject site and users involved in the conflict, as determined by the chairperson of the board of land and natural resources.
2. Two representatives from the community at large as invited by the governor; and
3. One representative from the Hawaii Tourism Authority.

The Act set the tasks of the working group as follows:

1. Identify cost-effective management strategies to resolve user conflicts within the selected area.
2. Identify funding sources and operational costs for each management strategy identified.
3. Facilitate the execution, if practicable, of a written agreement among agencies and other interested parties for the shared use and maintenance of the area.

SELECTION OF AN AREA ON OAHU

As Hawai‘i’s population grows, and with the increased focus on active tourism, Hawaii’s once remote beaches and trails are becoming ever more popular. Conflicts between hunters and hikers on mixed use trails, conflicts between swimmers and paddle boarders in the water, conflicts between locals who want a place to park and tour operators using parking spaces in recreational areas, and conflicts over commercial operations on public beaches have become everyday occurrences for the Department.

After polling the Department’s Divisions and inquiring with the City and County of Honolulu (City) what area they thought would be the most appropriate area of focus, there was consensus that this Act provided an opportunity to address user conflicts at Waikiki Beach. Then Department Chair William Aila opted to start with unauthorized pre-setting or the practice of setting out beach chairs and umbrellas prior to their rental and occupation. The Department considers pre-setting a commercial activity that is prohibited on public land unless authorized via a permit approved by the Board of Land and Natural Resources (Board). This is a particular problem in the area fronting the Shorebird Restaurant, the Royal Hawaiian Hotel, the Outrigger Hotel and the Moana Surfrider Hotel. In addition, the City has four vendors who operate on Kuhio Beach and the State has one vendor who operates in front of the Hilton Hotel. Unauthorized pre-setting is not an issue in these particular areas.

Addressing unauthorized pre-setting on Waikiki Beach allows the Department to address: 1) the definition of a commercial use; 2) where on Waikiki Beach commercial uses are allowed, if they are allowed at all; and 3) the parameters of commercial use, if it is to be allowed at all. Addressing these issues in Waikiki Beach will set precedent for addressing similar issues on other beaches in Hawaii. For example, the Department is facing similar pressures to allow pre-setting on Kahala Beach on O'ahu and on Wailea Beach on Maui.

However, Waikiki Beach is unique because the State does not own all of the land in front of the Royal Hawaiian, Outrigger Waikiki and Moana Surfrider hotels. A 1965 agreement between the State and the hotel landowners gave the owners of the abutting hotels 75 feet of the beach in exchange for cooperation with the State's proposal to extend Waikiki Beach up to 120 feet from the existing shoreline. The abutting private beach land is subject to a 75 foot public right of way for the public to pass along the Beach, sunbathe or do other beach activities. The easement in favor of the public restricts commercial activities in the right-of way.¹ According to the agreement, the State is responsible for maintaining and policing the easement. This easement would be extinguished upon the State building 75 feet of beach seaward of the existing beach, but since that has never happened, the easement remains in effect.

BRIEF REVIEW OF 2014 ACTIONS

The Department had internal meetings, as well as meetings with appropriate City staff who all agreed that addressing commercial conflicts at Waikiki Beach would help to set precedent for the enforcing of commercial rules on all islands. The names of two community members involved in hotel management and commercial uses on Waikiki beach were sent to the Governor for nomination to serve on the working group.

2015 ACTIONS

After a review of the Act and the various user conflicts before the Department, current Department Chair Suzanne Case agreed that addressing unauthorized pre-setting, and other issues in Waikiki Beach remains the best way to meet the mandate of the Act. In order to meet the requirement for community involvement which would allow the Department to move forward without Governor's nominees to the working group, the Department invited the hotel managers and vendors in the area of the Surfrider-Royal Hawaiian hotels' beach section as well as the Outrigger Reef and the Hale Koa hotels, and their vendors for a meeting to discuss unauthorized pre-setting on public lands. In addition, Mr. Bob Finley of the Waikiki Neighborhood Board and Mr. Rick Egged Executive Director of the Waikiki Improvement Association were invited. A list of invitees and attendees is included in Appendix A.

All parties agreed that unauthorized pre-setting on public land is a commercial activity subject to regulation by the Board, but were in disagreement as to what constitutes pre-setting. The hotel parties agreed that it should be controlled and noted that they have informal agreements as to their pre-setting boundaries. They also noted that pre-setting allowed some financial advantages and if

¹ Surfrider-Royal Hawaiian Sector Beach Agreement. Bureau of Conveyances Liber 5219 page 181. Dec 28, 1965. See also *Waikiki Beach Reclamation Agreement between the Territory of Hawaii and Property Owners as follows: Main Agreement, October 19, 1928, Supplementary Agreement, July 5, 1929, Bishop Estate Agreement, October 19, 1928*. Recorded at the Bureau of Conveyances, Book 1047, pages 176-202 and see also section 1034, p. 11.

one party was pre-setting, then all others would have to follow suit in order to retain business.

As a result of the meeting, Mr. Egged agreed to lead the hotel group in submitting a pre-setting proposal to the Department. Mr. Egged has subsequently reported that he has developed a draft agreement that he believes all parties will sign at an upcoming meeting the first week of October.

Department staff has been following live web-cams set up at the Sheraton and Moana hotels and have noted significantly less pre-setting in front of those hotels. However, there continues to be significant pre-setting in front of the Outrigger Hotel.

GOALS

The Department's has the following goals:

1. Provide clarity on jurisdiction in Waikiki Beach by:
 - a. Transferring jurisdiction to the City where feasible - completed
 - b. Clarifying ownership and jurisdiction where not feasible - mainly completed
 - c. Setting up agreements about maintenance and enforcement - in process
2. Provide clarity on commercial uses in Waikiki:
 - a. Define commercial uses - in process
 - b. Define limits of private commercial use of the beach - in process
 - c. Ensure public access to Waikiki - completed and continuing.
3. Provide a framework to address future problems, or problems in other areas. – in process

CONCLUSION

Although a formal working group was never created, the Department moved forward with a broader working group composed of staff of the Department, hotel managers and beach item rental vendors. The City was invited and met with the Department once and were supportive of the State's choice to address unauthorized presetting. However, as the City does not own land within the Royal Hawaiian-Surfrider hotels' sector of the Beach, they chose to wait until lands under their jurisdiction were included in discussions. The Department is actively working on an agreement with hotel owners in the Royal Hawaiian –Surfrider hotels' sector of the Beach, and is committed to fully addressing this issue. The Department aims to have an agreement in place by June 30, 2016, but more time may be needed.

This is the final report required by the Act and the working group sunsets on June 30, 2016.

APPENDIX A

**AUGUST 19, 2015
SIGN IN SHEET**

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