

Report to the Twenty-Eighth Legislature
2015 Regular Session

USER CONFLICTS ON PUBLIC RECREATIONAL LANDS



Prepared by the
Department of Land and Natural Resources
State of Hawaii

In response to
Act 145, Session Laws of Hawaii 2014

October 2014

USER CONFLICTS ON PUBLIC RECREATIONAL LANDS

BACKGROUND

Act 145, Session Laws of Hawaii 2014, directs the Department of Land and Natural Resources (Department) to establish a two-year pilot project to convene a working group on the Island of Oahu to identify and implement management strategies for the resolution of user conflicts on public recreational lands. The Act further directs the Department to select one public recreational area to be the focus of the working group, provided that the recreational area chosen 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.

During the first year of the pilot project, the working group shall:

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

The working group shall also:

1. Submit a preliminary report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the 2015 Regular Session; and
2. Submit a final report to the Legislature no later than twenty days prior to the convening of the 2016 Regular Session.

SELECTION OF AN AREA ON OAHU

The Department believes that Waikiki Beach fulfills the purpose of Act 145. The Waikiki shore attracts more than four million visitors per year and is responsible for over six percent of the gross state product and almost eight percent of all civilian jobs statewide. On any given day, there are roughly as many visitors as there are permanent Waikiki residents squeezed into an area of about two square miles.

With all of this activity, user conflicts are bound to occur. The Department has received complaints over the past several years regarding the use of Waikiki Beach by commercial vendors. One questionable practice has to do with “pre-setting,” or the practice of commercial vendors setting out beach chairs and umbrellas prior to their rental. This practice has the unintended effect of reducing the amount of area available to passive beach users in the most heavily used portions of Waikiki Beach.

Pre-setting is occurring in the area fronting the Outrigger Reef Hotel, the Royal Hawaiian Hotel, the Outrigger and the Moana Surfrider Hotels. The City and County of Honolulu has four vendors who operate beach concessions at Kuhio Beach, but they are not permitted to pre-set. In addition, pre-setting is not allowed by the Hilton Hawaiian Village Hotel at Duke Kahanamoku Beach.

Management responsibility along Waikiki Beach is complicated. This area is subject to a number of state, county, and federal laws as well as contracts, or agreements between the State of Hawaii and the underlying landowners.

In 1928, the Territory of Hawaii entered into an agreement “1928 Waikiki Agreement” with the private beach front property owners, including Kamehameha Schools, Queen Emma Foundation, and others for the purpose of improving Waikiki Beach. The 1928 Agreement covered the shore front area from Ala Wai to Kaimana Beach. The 1928 Agreement provided that the Territory of Hawaii would build a beach seaward from the mean high water mark and that this expanded beach would be considered accreted land with title vesting in the private property owners. The private property owners agreed that they would allow for a 75-foot wide public easement measured shoreward from the new mean high water mark. The agreement stipulated that no structures shall at any time be situated within the area reserved for the public (i.e., the area from the mean high water mark 75-feet inland).

In 1965, the State entered into another beach agreement with property owners in the “Surfrider-Royal Hawaiian Sector.” The 1965 Agreement superseded earlier Waikiki Beach Reclamation Agreements (e.g., 1928 Agreement) for the Surfrider-Royal Hawaiian Sector (i.e., the area from the Royal Hawaiian Groin to the Police Station, including the Royal Hawaiian Hotel, the Outrigger Hotel and the Moana Surfrider Hotel). Under the terms and conditions of the 1965 Agreement, the State of Hawaii conveyed portions of the beach to the private landowners in exchange for a 75-foot public easement for a bathing beach and foot passage shoreward of the mean high water mark.

The area that was conveyed to the private property owners was defined by property metes and bounds and was further delineated in the 1965 Agreement by boundaries “Lines A and B”. It was further envisioned that the State would construct a beach more than 75-feet seaward of Line B, so that the area with Line A and B would belong to the private property owners. However, the State never built a beach that wide so the 1965 Agreement stipulates that the area between lines A and B shall remain a public easement for a bathing beach and foot passage shoreward of the mean high water mark. The Agreement further stipulates that “The owners will not conduct or permit any commercial activity of any kind on the area between lines A and B subject to public easement while so subject.”

The Department believes that practice of pre-setting is inconsistent, and in violation of the terms, conditions, and intent of the Waikiki Beach Reclamation Agreements. Act 145 provides the various parties with an opportunity to resolve such matters in a constructive and interactive process.

MEMBERS OF THE WORKING GROUP

Department of Land and Natural Resources:

William Aila, Jr., Chair

Kevin Moore, Land Division

Ed Underwood, Division of Boating and Ocean Recreation

Sam Lemmo, Office of Conservation and Coastal Lands
Randy Awo, Division of Conservation and Resources Enforcement
Department of Land and Natural Resources Support Staff:
Pua Aiu, Office of the Chairperson
Ian Hirokawa, Land Division
Barry Cheung, Land Division
Meghan Statts, Division of Boating and Ocean Recreation
Alex Roy, Office of Conservation and Coastal Lands

City and County of Honolulu

Ray Soon, Office of the Mayor
Michelle Nekota, Department of Parks and Recreation
Tracy Kubota, Department of Enterprise Services

City and County of Honolulu Staff:

Edwin Sniffen, Office of the Mayor's

Hawaii Tourism Authority- To be determined

Community Members

Ted Bush, Waikiki Beach Services (pending governor's appointment)
George Szigeti, Hawaii Lodging and Tourism Association (pending governor's appointment)

ACTIONS

Department staff held two meetings to define the study area as well as the specific conflicts to be addressed. The Department and the City held one meeting to introduce all players and to get agreement on the issue to be addressed.

The Department has compiled information pertinent to this issue and has created maps of all of the Waikiki Beach area noting important features that will assist the working group's understanding of the multiple issues at Waikiki.

GOALS

The Department's has the following goals:

1. Provide clarity on jurisdiction in Waikiki by:
 - Transferring jurisdiction to the City where feasible.
 - Clarifying ownership and jurisdiction where feasible.
 - Setting up agreements about maintenance and enforcement.
2. Provide clarity on commercial uses in Waikiki:
 - Define commercial uses
 - Define limits of private and rental use of the beach
 - Ensure public access to Waikiki
3. Provide a framework to address future problems, or problems in other areas.

CONCLUSION

The Department appreciates the opportunity that this Act provides to address long-standing issues in Waikiki. The Department believes work done on this pilot project will serve as a template for other projects around the State. Active enforcement to protect our resources and users will require fiscal support from the Legislature.