

REPORT TO THE TWENTY-NINTH LEGISLATURE
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Progress on the Resolution of Conflicts Under the 1965 SurfRider-Royal
Hawaiian Sector Beach Agreement



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STATE OF HAWAII
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Progress on the Resolution of Conflicts Under the 1965 SurfRider-Royal Hawaiian Sector Beach Agreement

Executive Summary

Commercial activity is not allowed on Waikīkī Beach (Hawaii Administrative Rule (HAR) 255-6-(b). However, under agreements made by the Legislature in 1928 and 1965, certain portions of the Beach are arguably private property. Under Act 145, Session Laws of Hawaii (SLH) 2014, the Department of Land and Natural Resources (DLNR) began working with the Waikīkī Improvement District and the Royal Hawaiian, Outrigger and Moana Surfrider hotels and their vendors to address the “pre-setting” issue. After two years, the Group had not come to a solution, so the Senate, under Senate Resolution 27, Senate Draft 1, Regular Session of 2016, directed DLNR to continue working on the issue and to provide a progress report to the 2017 Legislature. This report identifies the problem, and provides the solution agreed to by the hotels and their vendors.



Beach Chairs in front of the Outrigger Waikiki Beach

Background

In 1927, territorial governor, Wallace Rider Farrington signed legislation into law as Act 273 allowing the Board of Harbor Commissioners to rebuild the eroded beach at Waikīkī. In October 1928 the Territory of Hawai‘i and the property owners at Waikīkī signed the “Main Agreement” for the reclamation of Waikīkī Beach. A condition of Act 273 was that legal

arrangements are made whereby the general public shall be assured of the right to use such portion of any beach built as lies within seventy-five (75) feet shoreward of the mean high-water mark.

Abutting landowners could gain property through this agreement, as the accreted land would vest in the owner or owners of the abutting lands, subject to an easement that allowed for the use of 75 feet of beach from the high-water mark for use as a public bathing beach and for foot passage. Unfortunately, no additional beach front accrued and the beach at Waikīkī continued to erode.

Thirty-seven years later, the State passed legislation as Act 201, SLH 1963, so that it could make improvements to Kuhio Beach from the Kapahulu Groin to Waikīkī Beach Center. Act 201 mandated two things:

- 1) An agreement be executed between the state and at least two-thirds of the owners in the affected area in which the owners would agree to fix the boundaries of their private properties along Waikīkī beach so that no addition or accretion to private land would accrue henceforth; and
- 2) The existing public easement created under the 1928-1929 Waikīkī Beach Reclamation Agreement shall remain as is. (Act 31, SLH 1963, Section II)

The following year, Act 201 was amended (Act 31, SLH 1964) to give the Attorney General more flexibility in his negotiations with the landowners, allowing for some accretion of land, and thus the area between the A and B lines was conceived. The amendment language notes that because of the state of the beach, Act 31 was “declared to be an urgency measure deemed necessary in the public interest within the meaning of Section II of Article III of the Constitution of the State of Hawai‘i ” (Act 31 SLH 1964, Section 1).

The State of Hawai‘i and the owners in the SurfRider-Royal Hawaiian Sector of Waikīkī signed the “1965 Agreement” also known as the “SurfRider-Royal Hawaiian Sector Beach Agreement.” This Agreement contained the following conditions:

- The State would construct a beach, seaward of Line B in the SurfRider-Royal Hawaiian Sector that would not exceed 220 ft. See Map below for the

approximate location of the A and B Lines.

- The owners would not object or complain about improvements or regular maintenance of the Beach.
- The owners would release and quitclaim any rights to the Beach seaward of Line B, whether created by construction or otherwise. The owners and all persons under them retained free access to the beach and across the beach to the water.
- No structures would be allowed, seaward of Line B, except 2 lifeguard towers and any structures used in connection with the maintenance of the beach (i.e.-groins).
- The State will protect and preserve all existing beach between Lines A and B from any diminution as a result of beach refurbishment, and will not remove the groin now situated near the north end of the SurfRider-Royal Hawaiian Sector without first constructing a replacement groin. Please see Maps for Lines A and B.
- The State will quitclaim to the respective owners all interest in the land between Lines A and B, provided, however, that the land between Lines A and B shall remain subject to the public easement (75 ft.) and all terms & conditions thereof provided by the Waikīkī Beach Reclamation Main Agreement until a beach at least seventy-five (75) feet wide shall have been created seaward of Line B along its entire length.
- The owners will bring their portion of the beach to the finished grade of the new beach.
- The owners will not allow structures of any kind between Lines A and B except fences or hedges for the purpose of marking the boundaries of their respective lands.
- The owners will not conduct or permit any commercial activity of any kind on the area between Lines A and B subject to the public easement while so subject.

The State is responsible for :

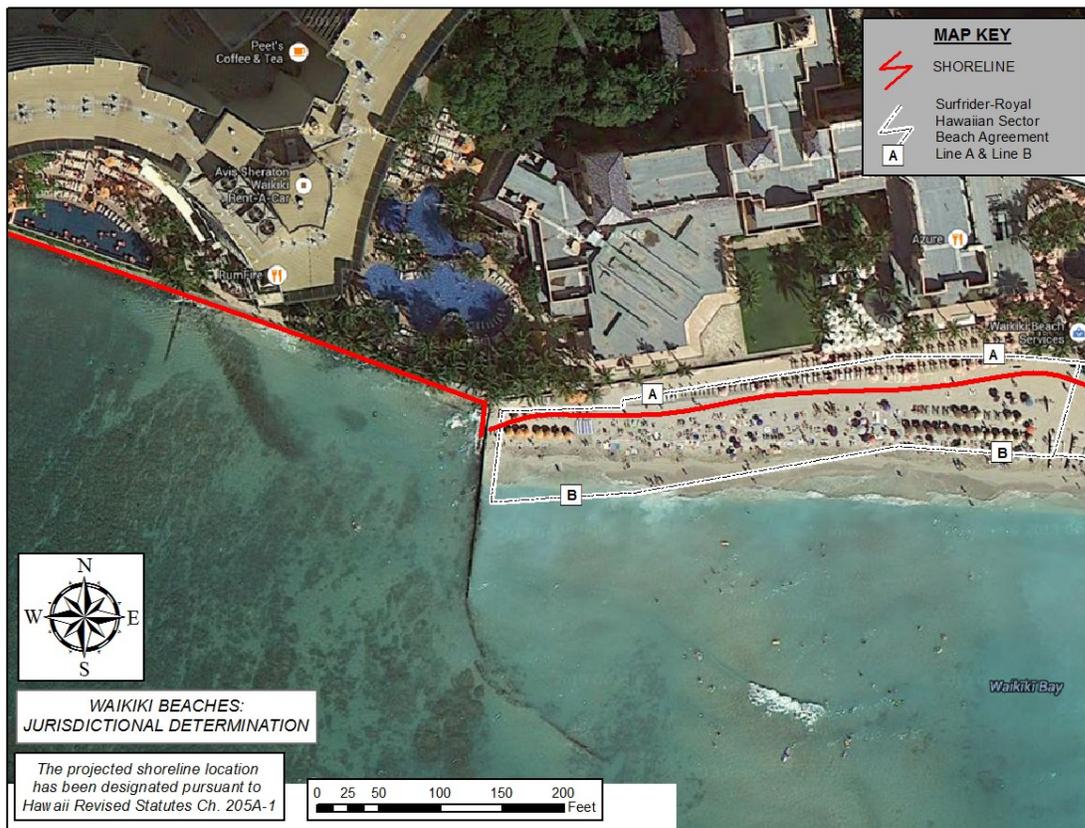
- Keeping the Beach neat and sanitary, subject to the availability of funds.
- Policing to assure the fullest use by the public for a bathing beach and foot

passage.

- The State will not conduct or permit any commercial activity of any kind on the public beach in the SurfRider-Royal Hawaiian Sector of Waikīkī Beach, including all beach seaward of Line B and also the area between Lines A and B while subject to the public easement.

Fifty-one years later, and after numerous attempts to nourish Waikīkī Beach, it continues to erode, and the 75 foot public easement between Lines A and B continues in effect. There are also numerous activities that are arguably commercial taking place within Lines A and B, and perhaps even shoreward of Line B.

Map of the A and B Lines, and estimated shoreline.



Working Group

Under Act 145, SLH 2014, DLNR convened a working group comprised of the hotel owners in the Royal Hawaiian-Surfrider Sector of the beach and their vendors (operators), the Waikīkī Improvement Association, the Waikīkī Neighborhood Board and hotel landowners to address the

issue of pre-setting on Waikīkī Beach. The goal of the Working Group was to develop a solution that was clear and worked for all parties. The Waikīkī Special Improvement District Association (WSIDA) acted as the liaison between DLNR and the hotel owners, land owners and vendors and was responsible for coordinating meetings with the operator groups. This Group developed the guidelines and the WSIDA provided the guidelines to DLNR for comment.

The final product is the Waikīkī Beach Recreational Use Guidelines (Guidelines), included below. The Guidelines provide definitions for pre-setting, as well as for storage and other terms that are not currently defined in the law. In addition, the Guidelines specify how beach equipment can be used, how water craft can be used, and the records required for use of beach equipment in this area.

The implementation of the Guidelines is the responsibility of the Waikīkī Beach Recreational Use Area (WBRUA) vendors of beach equipment and watercraft. The guidelines make clear that the state is not responsible for implementing the guidelines, but retains the right implement HAR 13-255 regardless of the guidelines.

Current Status

In mid-November, DLNR began notifying vendors of complaints and the vendors have been compliant in moving commercial operations off lands under the easement to the State. DLNR and WBSIDA agreed to allow self-implementation of the guidelines until the end of January, using the Waikīkī Beach Self Monitoring Measures which includes measures of success as well as the State's definition of pre-setting and beach storage. As of December 7, the quality of the public sunbathing areas has improved, as well as the quality of lateral public access. DLNR will continue to monitor the situation.

Waikīkī Beach Recreational Use Guidelines

SurfRider-Royal Hawaiian Sector of Waikiki Beach

Dated: November, 2016

The following guidelines (these “*Guidelines*”) have been developed by the Waikiki Beach Special Improvement District Association (WBSIDA) with input from the Department of Land and Natural Resources (DLNR). These Guidelines are for self-regulation and are not intended to be used for other regulatory or criminal enforcement. DLNR reserves the right to enforce Section 13-255-6, of the Hawaii Administrative Rules (“*HAR*”), which prohibits commercial activity on Waikīkī Beach.

1) **Definitions:**

Waikīkī Beach Recreational Use Area (“WBRUA”): The WBRUA is the area between WBRUA Makai Boundary and WBRUA Mauka Boundary in Figure 1.

Lateral Access Corridor: For purposes of these Guidelines, the Lateral Access Corridor means a transit corridor dedicated to foot passage along the entire length of the WBRUA. The Lateral Access Corridor shall start landward (mauka) of and along a line that represents the daily high tide line or approximately the mean high water line (not the certified shoreline) of the ocean adjusted to daily and seasonal fluctuations. The Lateral Access Corridor shall have a width sufficient to allow safe lateral access alongshore at all times of the day and seasons but in no case extending landward of the WBRUA.

Beach Equipment: For purposes of these Guidelines, Beach Equipment means recreational equipment rented for hire, including but not limited to beach chairs, umbrellas, mats and towels.

Watercraft: For purposes of these Guidelines, Watercraft means water sports equipment rented for hire, including outrigger canoes, surfboards, stand up paddleboards (SUPs) including jumbo SUPs, body boards, kayaks and other non-motorized water craft equipment and ancillary accessories that are permitted in the WBRUA by DLNR.

Vendor: For purposes of these Guidelines, Vendor means a person that possesses the necessary permit(s) issued by DLNR to rent Beach Equipment and/or Watercraft to a Customer on the land immediately adjacent to the WBRUA.

Customer: For purposes of these Guidelines, Customer means a person that rents Beach Equipment and/or Watercraft from a Vendor and uses such Beach Equipment and/or Watercraft.

Presetting: For purposes of these Guidelines, Presetting means Beach Equipment and/or Watercraft that is set up and/or placed by a Vendor at a location within the WBRUA without a reservation by a Customer and/or without the physical presence of such Customer to immediately use such Beach Equipment and/or Watercraft.

Storage or Stored: For purposes of these Guidelines, Storage or Stored means Beach Equipment and/or Watercraft that is neither reserved for use nor being used by a Customer and is set up and/or placed by a Vendor at a location within the WBRUA.

Watercraft Zone: For purposes of these Guidelines, Watercraft Zone means the areas depicted on the attached Figure 1.

Commercial Use: For purposes of these Guidelines, Commercial Use means activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining a direct or indirect economic benefit.

2) Guidelines:

- a) The recreational beach use zone is roughly delineated within the WBRUA in Figure 1.
- b) Beach Equipment and/or Watercraft are allowed only within the appropriate WBRUA zones if they are rented to a Customer by a Vendor for that zone as shown in Figure 1 and such Customer is physically present to immediately use the Beach Equipment and/or Watercraft. All commercial transactions, including rentals, shall take place on the land immediately adjacent to the WBRUA. Vendors are allowed to assist customers in setting up Beach Equipment, with the Customer physically present. No Storage of Beach Equipment and/or Watercraft is allowed in the WBRUA.

- c) Public amenities (e.g., beach trash cans) are allowed within the WBRUA.
- d) Watercraft Zones are to be used only for launching and landing Watercraft. Storage or presetting of Watercraft and/or Beach Equipment is not allowed in the Watercraft Zones, provided, however, that, for the avoidance of doubt, an outrigger canoe or sailing catamaran registered by or with the DLNR may be stored as appropriate in the Watercraft Zone or pursuant to the DLNR Hawaii Ocean Waters and Shores Rules which state outrigger canoes may be placed, moored or anchored below (or seaward of) the mean high water mark in accordance with Section 13-255-6(c), HAR.

3) Use of Beach Equipment:

- a) No Presetting of Beach Equipment. All Beach Equipment must be rented to a named Customer and be set up within the WBRUA at the time such Customer is physically present to immediately use the Beach Equipment.
- b) Beach Equipment can be rented for immediate use and then placed within the appropriate WBRUA zone for such immediate use.
- c) A tag must be attached to the Beach Equipment indicating a reservation number and length of time for use.
- d) Each Vendor shall maintain a log of reservations for the Beach Equipment indicating the name, date, time and duration each piece of equipment is rented.

4) Use of Watercraft:

- a) Watercraft may be set up and/or placed by a Vendor at a location within the WBRUA only when a Customer is physically present to rent and immediately use such Watercraft. Vendors may assist a Customer in transporting such Watercraft across and in placing such Watercraft at a location within the WBRUA, so long as such Customer is physically present to immediately use such Watercraft.

- b)** Watercraft Zones are to be used only for ingress and egress of Watercraft and are not to be used for Storage except outrigger canoes per Section 2(d).
- c)** Watercraft, except outrigger canoes in accordance with 4(b) above, shall be Stored on private property landward (or mauka) of the WBRUA landward boundary at all times.

Implementation of these Guidelines is the responsibility of all WBRUA Vendors of Beach Equipment and/or Watercraft. Monitoring of these activities related to the Guidelines is the responsibility of the hotel operators and Vendors within the WBRUA. If the DLNR determines that self-enforcement is not working, it reserves the right to **(a)** enforce the applicable regulations on **(i)** commercial uses (Section 13-255-6 (b), HAR), and **(ii)** illegal storage (Section 13-255-6 (b) and (c), HAR), and **(b)** ensure that permitted activities, do not “unduly disrupt others from enjoying the beach” (Section 13-255-6(a), HAR).

WBSIDA will monitor compliance with these Guidelines on a periodic basis, and will provide status updates to its members and Vendors to facilitate self-enforcement. Please note, DLNR will continue to respond to complaints and shall enforce existing rules and/or develop new rules to address these issues. The intention of these Guidelines is to **(i)** improve public safety, **(ii)** eliminate complaints and conflicts concerning lateral access across and the recreational use of the WBRUA by self-enforcement of these Guidelines, and **(iii)** avoid further regulatory involvement from the DLNR. Further review and revision of these Guidelines may be necessary and are subject to agreement by the affected stakeholders and WBSIDA members.

End of Guidelines

Figure 1. Waikiki Beach Recreational Use Area

Note: Map not to scale and WBRUA boundaries are approximate.



Waikīkī Beach Self-Monitoring Measures

Vendors and hotels within the Waikīkī Beach Recreational Use Area (WBRUA) as defined in the Waikīkī Beach Recreational Use Guidelines, October, 2016 will self-regulate according to the attached guidelines for 2 months. After 2 months, ending January 31, 2017, the state will evaluate whether illegal storage of beach chairs and other equipment at Waikīkī beach has decreased, and opportunities for public use of the beach has increased. Should the situation deteriorate sooner than two months, DLNR reserves the right to enforce Hawai‘i Administrative Rules (HAR 13-255). Prior to any enforcement action, DLNR will notify individual vendors of complaints or observed violations regarding the illegal storage of property on the beach. The DLNR reserves the right to enforce HAR 13-255 without further warning. Vendors are responsible to notify the DLNR point of contact of any change in their contact information.

The State’s evaluation of the effectiveness of the self-enforcement within the WBRUA will be based on the following criteria:

1. Amount (%) of open beach space not occupied by beach equipment
2. Percentage of beach rentals unoccupied but with required hang tags.
3. Number of pre-set observations.
4. Number of beach storage observations.
5. Quality of lateral public access along shore and in the back beach.
6. Number of complaints related to beach equipment and storage.

The State will use the following definitions, which are consistent with its interpretation of the “no commercial activities” clause in HAR 13-255.

Pre-setting

Beach Equipment and /or watercraft that is set up or placed by a Vendor at a location within the WBRUA without the physical presence of such Customer to immediately use such Beach Equipment or Watercraft.

Beach Storage:

Beach Equipment or Watercraft that is not being used by a Customer and is set up and/or placed by a Vendor at a location within the WBRUA

Quality of lateral public access along the shore and in the back beach should be no less than ten feet.

Quality of public sunbathing areas—should be at least 20 feet from high wash of waves to nearest chair. Should not be only behind beach chairs.

DLNR staff will periodically monitor use of beach equipment and watercraft on the beach and may ask vendors to see their reservation logs.

Any party may ask to amend this agreement provided the proposed amendment is not contrary to HAR 13-255 or any other applicable state laws. All parties must agree to the amendment.