

REPORT TO THE TWENTY-NINTH LEGISLATURE
STATE OF HAWAII
2017 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:

Act 86, Session Laws of Hawaii, 2014
In Conjunction With The
Task Force on Beach and Water Safety

IN RESPONSE TO:

Act 190, Session Laws of Hawaii 1996,
As Amended by Act 101, Session Laws of Hawaii 1999,
As Amended by Act 170, Session Laws of Hawaii 2002,
As Amended by Act 152, Session Laws of Hawaii 2007,
As Amended by Act 81, Session Laws of Hawaii 2009

November 2016

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

PURPOSE

This report addresses the reporting requirements of Act 86, Session Laws of Hawaii (SLH) 2014, and Act 190, SLH 1996 for activities conducted in 2016.

I. PUBLIC LAND LIABILITY

A. Background Information

This portion of the report applies to Section 4 of Act 82, SLH 2003, which was made permanent by Act 86, SLH 2014. Act 82 established a Risk Assessment Working Group (RAWG) that is comprised of state and county officials, and a person knowledgeable in signs. Recommendations are periodically made to the Board of Land and Natural Resources as needed that authorizes the strategic placement of warning signs, devices, and systems on improved public lands. The signs are designed to warn the public of the potential exposure to inherent risks and hazards associated with natural conditions on public lands.

Chapter 13-8 Hawaii Administrative Rules (HAR) was promulgated in 2006 and a process was created for warning sign design and placement that warns the public of potential danger related to exposure to five natural occurring conditions: flashfloods, falling rocks, submerged objects in streams, cliffs, and at a site specific geographic location on Maui – falling trees. Chapter 13-8-9 to 13-8-11, HAR directs the Department of Land and Natural Resources (Department) to design and place warning signs to warn the public of the potential danger and risks of the natural conditions on public lands. Locations across the State are periodically evaluated for potentially hazardous natural conditions and related exposure in both state and county parks and along Na Ala Hele trails.

B. Act 86, SLH 2014

Senate Bill 1007, Senate Draft 2, House Draft 2 (House Standing Committee Report 1655-14) RELATING TO PUBLIC LAND LIABILITY was passed by the 27th Legislature and signed into law by the Governor as Act 86, SLH 2014:

“SECTION 1. Act 82, which will sunset on June 30, 2014, established a process by which a legally adequate warning system could be developed for improved public lands. The legislature finds that Act 82 has increased public safety and protects the State and counties from unlimited liability arising out of recreational activities on public lands and, therefore, should be made permanent.

The purpose of this Act is to make permanent liability protections for warning signs for outdoor recreation on public lands by amending Act 82, Session Laws of Hawaii 2003, as amended.

SECTION 2. Act 82, Session Laws of Hawaii 2003, as amended by section 5 of Act 152, Session Laws of Hawaii 2007, as amended by section 3 of Act 81, Session Laws of Hawaii 2009, is amended by amending section 8 to read as follows:

SECTION 8. This Act shall take effect on July 1, 2003 [, and shall be repealed on June 30, 2014]."

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect on June 29, 2014."

C. Action in 2016

1. Features managed or under the jurisdiction of the Department's Division of Division of Forestry and Wildlife

As no new signs were proposed by the Division, no activity was necessary during 2016.

2. Features managed or under the jurisdiction of the Department's Division of State Parks and Land Division

Kauai None

Hawaii None

Maui:

Iao Valley State Monument: 1 – Notice – Area Closed

Oahu:

Kahana State Park: 3- Danger Hazardous Cliffs

Kahana State Park: 3-Area Closed (different trail heads leading up to the Crouching Lion trail)

Diamond Head State Monument: 6-Area Closed (Linear Park, ewa side of entry road)

Diamond Head State Monument: 1-Area Closed (Kahala Lookout)

Diamond Head State Monument: 1-Area Closed (Makalei Place)

Diamond Head State Monument: 13-Area Closed (Makai/Lighthouse)

Diamond Head State Monument: 3-Area Closed (Crater Floor in open field and near office trailer)

3. Features Managed by the Statewide Counties

As no new signs were proposed by a county, no activity was necessary during 2016.

D. Conclusion

Due to an increasing amount of interest by residents and visitors in nature related recreational pursuits and the proliferation of information being posted on the Internet via social medium, there continues to be a need to inform the public on exposure to natural

hazards and as such – notification is a priority with the Department. This Act will continue to be appurtenant to the government’s duty to warn and the consumer’s responsibility to make an informed choice in regards to possible exposure to specific natural hazards.

However, the posting of signs in state and county parks and at Department trails will not fully inform the growing amount of global users who access non-managed or gain unauthorized access to wilderness area via information promoted by social media – and as such it is anticipated that there will continue to be safety issues and the need for response from county rescue personnel over time as this trend continues.

Upon further evaluation, while signage is effective in warning of exposure, it is not an absolute deterrent to public access to areas where they may be further exposed to natural hazards.

II. RECOMMENDATIONS OF THE TASK FORCE ON BEACH AND WATER SAFETY

This report has been prepared pursuant to Act 190, SLH) 1996, as amended by Act 101, SLH 1999, as amended by Act 170, SLH 2002, as amended by Act 152, SLH 2007, as amended by Act 81, SLH 2009 mandating annual reporting by the Task Force on Beach and Water Safety.

A. Application

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 shore break 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.

B. Past Actions

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.

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.

Since inception, the Task Force on Beach and Water Safety has accomplished the following: Prepared guidelines for temporary and permanent sign placement and designed and approved installation of signs to warn of exposure to: strong current, dangerous shore-break, high surf, waves break on ledge, sudden drop-off, slippery rocks, man-o-war, jellyfish, sharp coral, shark sighted and rip currents

C. Conclusion

Due to the complexity and magnitude of increasing statewide ocean related safety issues, there is a compelling need to re-organize the Task Force on Beach and Water Safety to evaluate new coastal locations for potential signage led by a water safety expert with experience in managing both ocean safety location and ancillary ocean safety staff.