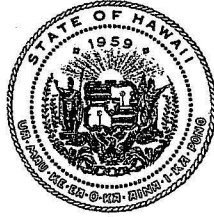
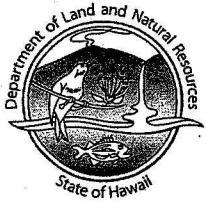


LATE TESTIMONY

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 3, 2007

Author: LD-SM

Noa Napoleon
1750 Kalakaua Avenue, Suite 103
Honolulu, Hawaii 96815

Dear Mr. Napoleon:

SUBJECT: Your telephone inquiry re Waikiki hotel limits on commercial activity

This letter responds to your telephone inquiry to my staff regarding how far from a Waikiki hotel's property boundary line a hotel may extend past for the hotel's commercial activities.

A hotel cannot conduct any commercial activity beyond its property boundary, unless it has been issued a disposition (e.g. a lease, permit, or concession contract) by the Division of the Department of Land and Natural Resources (DLNR) with jurisdiction and the authority to grant that disposition.

Please be advised that our response is limited to property under the jurisdiction and management authority of DLNR. Many areas of Waikiki Beach are under the jurisdiction and management authority of the City and County of Honolulu, which may have its own policies and practices regarding use of its property.

Should you have questions on the above, please contact Oahu District Branch of Land Division at 587-0433.

Sincerely,

Laura H. Thielen
Chairperson

c: Oahu Land Board Member
Russell Tsuji

What about set back line?

of the Elks Club (Tax Map Key No. 3-1-32-6) to the Diamond Head boundary of Fort DeRussy (Tax Map Key No. 2-6-05), seaward of line "A" as shown on exhibit "A" and described in exhibit "B", dated July 13, 1965, and located at the end of this chapter, over which the State of Hawaii now has or hereafter acquires an easement for the use of the public as a bathing beach and for passing over and along by foot. [Eff FEB. 24 1994] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-255-6 Waikiki Beach uses and activities; restrictions. (a) Permitted activities. Waikiki Beach is open to public use for sunbathing, foot traffic, swimming, and other activities which, when engaged in, will not unduly disrupt others from enjoying the beach.

(b) Business operations, soliciting prohibited. No person shall engage in, conduct, transact, or solicit business of any kind on or at Waikiki Beach.

(c) Storage, parking, and display prohibited. No person shall store, park, moor, place, or display any thing or personal property on or at Waikiki Beach for the purpose of engaging in, conducting, transacting, or soliciting business of any kind; provided that an outrigger canoe or sailing catamaran registered by the department pursuant to Hawaii ocean waters and shores rules may be placed, moored, or anchored below the mean high water mark.

(d) Structures and obstructions prohibited. No person shall construct, erect, place, deposit, or set up any building, structure, booth, wall, obstruction, or any improvement of any kind, whether temporary, portable, or permanent in nature, on or at Waikiki Beach, except such as may be approved by the department for sporting events, public safety, or for beach construction, repairs, preservation, or cleaning. In addition to any other available remedies, the department may remove, raze, or demolish the same wherever found at Waikiki Beach.

(e) Ball, etc., playing and kite flying prohibited. No person shall throw, cast, catch, kick, or strike any type of ball, frisbee, or other similar object while on or at Waikiki Beach. No person shall fly a kite of any kind while on or at Waikiki Beach. [Eff FEB. 24 1994] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-06)

OTHER RESTRICTED ZONE ARE: MAKAPUU, POINT PANIC'S
OUTRIGGER "CANDES" etc.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES

ON

House Bill 1538 – RELATING TO PUBLIC LAND

BEFORE THE HOUSE COMMITTEE ON
TOURISM AND CULTURE

February 3, 2007

House Bill 1538 proposes to make hotel and resort use of public land, and particularly beaches, illegal when the public is excluded, and permissible if use of the public land is also open to the public and any equipment provided to a guest is removed within thirty minutes of disuse.

The Department of Land and Natural Resources (Department) opposes this bill because we believe the measure is unnecessary.

It appears that the measure is seeking to prohibit the exclusive use of state lands by hotels and resorts that derive an economic benefit from that use. By capitalizing on the enhanced value that is conveyed by the appearance of exclusivity and privacy, hotels and resorts that provide beach equipment in exclusive areas to its guests benefit economically. That kind of use of state lands constitutes "commercial activity" under Hawaii Administrative Rules ("HAR") Section 13-221-2 and is prohibited without a permit under HAR Section 13-221-35. A violation under HAR Section 13-221-35 would be subject to a fine of \$500 per day, plus charges for damages and administrative costs.

House Bill 1538, moreover, only targets improper activity by hotels and resorts without addressing the larger issue of comparable improper uses by other businesses, such as commercial ocean recreation operators, that affect the general public's access to and use of state lands.

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

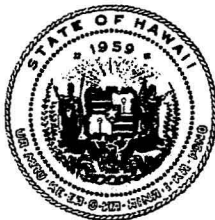
ROBERT K. MASUDA
DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

1. EXCLUSIVE AREAS
ARE PRIVATE, THEY
ARE NOT DIRECTLY ON A
PUBLIC BEACH

WHO THESE ARE

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 9, 2007

Senator Daniel K. Akaka
P.O. Box 50144
Honolulu, Hawaii 96850

Dear Senator Akaka:

Subject: Your letter of January 22, 2007, regarding concerns of Mr. Noa Napoleon

Thank you for your letter asking us to respond to certain concerns raised by Mr. Noa Napoleon. We also acknowledge and thank you for forwarding Mr. Napoleon's letter dated November 8, 2006.

The Department of Land and Natural Resources has jurisdiction over only one beach concession contract in Waikiki. This is for an area on Duke Kahanamoku Beach fronting the Hilton. The beach concession contract for this site was let by public auction and resulted in General Lease No. S-5801 to C&K Beach Services, Inc., whose principal is Mr. Clyde Aikau. The effective date of the beach concession contract was June 1, 2005. Subsequently, on March 17, 2006, Mr. Aikau sought protection under the federal bankruptcy code. The beach concession contract was considered to be an asset of the bankruptcy estate by the United States Bankruptcy Court, District of Hawaii, and its assignment in July, 2006, was solely within the discretion of that Court. The Bankruptcy Court assigned the beach concession contract to Hilton Hawaiian Village, LLC.

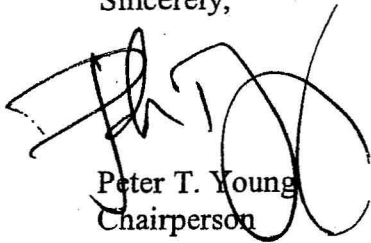
We believe the process by which this beach concession contract was let was fair. Mr. Napoleon had the opportunity to seek qualification as a prospective bidder and to participate in the public auction. According to our records, he declined to do so. Although the State of Hawaii was not involved in the process, Mr. Napoleon also had the opportunity to petition the United States Bankruptcy Court to have the contract assigned to him, and again declined to do so. The current beach concession contract expires on May 31, 2010. If the State and the Board of Land and Natural Resources act to conduct a new public auction for the beach concession contract for Duke Kahanamoku Beach upon the expiration of the current contract, Mr. Napoleon may have another opportunity to participate in the process.

With respect to Mr. Napoleon's concerns that Waikiki hotels should be issued permits for their use of Waikiki public beach area, we know of no instance where a Waikiki hotel is currently

encroaching upon the Waikiki public beach area. To the best of our knowledge, no hotel is occupying public land at Waikiki Beach, nor are any of their concessionaires. Hotel guests use the public beach area, as do Hawaii residents and tourists and visitors from non-Waikiki Beach hotels. It is true that the hotels rent beach equipment to their hotel guests, such as towels, chairs, umbrellas, boogie boards, and the like, but their hotel guests utilize Waikiki Beach in the same manner as do our residents, tourists and visitors from non-Waikiki Beach hotels. The State's current position is that no Waikiki hotels should be issued permits for the use of the Waikiki public beach area; it should be left to be enjoyed by all, hotel guests, residents, tourists and visitors, on a first come, first served basis, share and share alike.

We trust that this addresses your concerns. Should you have any further question, please contact Supervising Land Agent Steve Molmen of our Land Division at 587-0439.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter T. Young', written over a printed name and title.

Peter T. Young
Chairperson

Waikiki residents sit down to stand up for spot on beach

By **Rosemarie Bernardo**
rbernard@starbulletin.com

Mary Ann Mills and a group of beachgoers reclaimed part of a public beach outside the Outrigger Waikiki on the Beach Hotel by setting up their umbrellas at 6:15 a.m. yesterday.

The protesters were fed up with large blue umbrellas and lounge chairs put up by the hotel's concessionaire and occu-

pying nearly all the beach in front of the hotel.

"This is a public beach," said Mills, a Waikiki resident. "We understand they have a business. We just want part of the beach."

Mills and about a dozen residents and tourists contend that Beach Activities of Maui Inc., Outrigger's concessionaire,

Please see Beach, A6

RICHARD WALKER / RWALKER@STARBULETTM.COM

A group says Beach Activities of Maui, Inc., whose blue rental umbrellas were seen yesterday, unfairly uses too much of the beach in front of the Outrigger Waikiki.

Beach: New concessionaire taking up space

Continued From A1

squeezes out beachgoers from the public beach space fronting the hotel.

Beach Activities of Maui took over the concession stand in October 2005, according to hotel general manager Jim Heather.

While neighboring hotels, the Royal Hawaiian and Sheraton Moana Surfrider, have private beach areas within their properties to set up umbrellas, the Outrigger Waikiki must set up the blue umbrellas outside of the property line.

Some residents and tourists complain that they can't walk through the area because of the rows of blue umbrellas and chairs, some that are unoccupied. They also complain the umbrellas block their view of the ocean.

Mills said they hoped to put a dent in the concessionaire's revenue to get the point across: Share the popular beach spot fronting Duke's restaurant with the public.

"What they're doing is disrespectful to everybody," said Shannon Clement of Arizona, who spends her summers in Waikiki with her children, Jutah, 13 and Jaguar, 11, because of the array of activities available that include catamaran rides, canoe paddling and swimming.

"This is a hot spot," Clement said.

The problem is compounded with the peak summer season of tourists vacationing in Hawaii, primarily Waikiki, high tides and the smaller shoreline due to recent storms, Heather said.

He acknowledged that they have received complaints from beachgoers about the number of umbrellas and lounge chairs taking

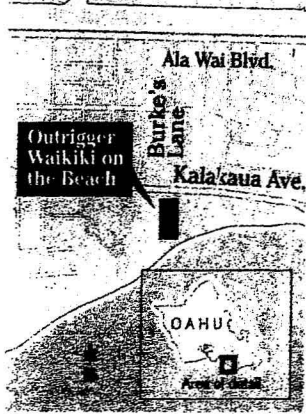


RICHARD WALKER / RWALKER@STARBULLETIN.COM

Beach Activities of Maui, Inc., whose canopy of umbrellas can be seen in the far background, unfairly uses too much of the public beach fronting the Outrigger Waikiki Hotel, protesters say.

WAIKIKI PROTEST

A group of residents and tourists protested yesterday about nearly all the public beach space fronting Outrigger Waikiki on the Beach taken up by large umbrellas and chairs set up by Beach Activities of Maui, Inc.



STAR-BULLETIN

up too much space. But Heather said he gets more complaints of the limited number of umbrellas

available.

"It's a public area. As long as they follow the law, they're (attendants) not doing anything wrong with what they're doing," he said.

The concession stand has 40 umbrellas available to rent. By 10 a.m., the beach space is filled with umbrellas, two hours after they start renting them out, according to concession stand attendants.

"I understand people's concerns. It's first come, first served. If you set up your towel there, that's your spot," Heather said.

A longtime beachboy, who declined to give his name, said he had to tell the beach attendants at least four times to move their umbrellas because they were encroaching in his designated area where he runs his operation.

"It's more of a courtesy and they haven't learned

that yet," the beachboy said.

"It's not our right to be here, it's a privilege. They should have the same attitude," he said.

"We're more conscientious of our neighbors. They're not," said the beachboy, noting that the concessionaire lacks aloha spirit, what Waikiki has long been known for.

"It's kind of a sad thing ... It all revolves around money," he said.

Michael Kelley, owner of Beach Activities of Maui, was not available for comment.

"I think we're acting within our boundaries," said concession stand attendant Chris Gibbons.

"Whether umbrellas are up or not, there're going to be people on top of people," he said.

Officials of the Department of Land and Natural Resources said they are looking into the matter.

Board of Land and Natural Resources.
1151 Punchbowl St.
Hon, HI 96813

Re: DOBOR parking proposal / HAR Chapter 13-233 "motor vehicle and parking rules."

Submitted by: Noa Napoleon

Date: 1/ 25/ 07

Aloha Board Members. I represent the Coalition that addressed this board in 2002, when we formed the Ad Hoc committee of stakeholders to address the impact of privatization. The parking proposal is being offered to address what are basically separate (unrelated) issues. This includes the problem of all day and overnight parking of commercial vehicles. I felt it was important to point out to you that despite the current rule that says "No commercial vehicles without permit," somehow DOBOR is overlooking (some say allowing) up to 5 professional surf schools to simultaneously converge on the heli port area to teach surf lessons. This activity includes staging of professional lessons and parking their commercial vehicles all day. This signals to us that certain small business (at least 5) have professional dealings with DOBOR, and are thus treated as permittees even though they are without actual permits. As professional "constituents" of DOBOR, "blue card companies" should not be allowed to use the harbor commercially unless they are properly outfitted with commercial permits, and even then I feel the heli port area should not be subject to commercial permitting of any kind. What I'm interested in is creating a harbor plan that closes loop holes that in the rules that are being exploited by commercial entities seeking to utilize the facility for business. DOBOR has repeatedly said they cannot respond to complaints because they are short staffed. This makes enforcement of rules almost impossible, which is problematic since we're talking about protecting the area as a recreational facility. Given the amount of surf schools that must use this area to do business its more critical than ever that the rules are clear on the prohibited activity. The Hilton for example has a professional relationship (is working with) several professional surf schools who park their company vehicles at the Ala Wai harbor and at Dukes beach, which is a city and county park (I'm told citations were issued on them for this). DOBOR is treating these companies like stakeholder's and seem to be inclined to overlook the infractions. How is this issue treated in the parking plan? If DOBOR officials really want to curb all day and overnight parking why are they simultaneously assigning commercial privileges to their blue card companies who are some of the very ones parking all day (this is well documented). The proposal has been premised on the need to correct this problem but it does not explicitly prohibit the surf school's from all day parking. So despite rules that now say no commercial parking without a permit, this activity does now and will continue unabated because of the so-called vagueness in the current rules. There are efforts underway as we speak to amend Hawaii Admin. Rules governing blue cards and ORMA boundaries (so maybe this is where surf schools will be addressed).

If the Hilton beach contract is any indication, CONTRACTED PARKING is a bad idea.

Its a very slippery slope if we're talking about DOBOR being able to manage a parking contract with any real efficiency. I say this because of the Marion Higa report which points to procurement and contracting iproblems within this division, exposing the sad

truth unfortunately.

In the summer of 2005 C&K had been awarded a five year contract by DLNR to operate a commercial beach service within the Dukes beach area, which is a public beach. Dukes Beach, which fronts the Hilton, is located directly adjacent to the Ala Wai harbor parking lot (the Heli Port) area. A year after C&K opened up for business they were allowed to use a bankruptcy process to immediately reconstitute themselves under the Hilton which had been awarded the remainder of that five year contract by a federal judge. After just one year into the contract Land officials made the decision not to revoke the permit from C&K as is normal policy but to work out a situation with the Hilton that would allow a referral situation with C&K which lets them and others like them operate under the Hilton master permit as separate entities. This process was finally questioned by the Land division after 4 separate commercial entities had been warned and cited for commercial encroachment on Dukes beach (the area delineated by the contract). The Hilton was one of those entities cited for encroachment. Land Administrator Russel Tsujii had told the BLNR that these entities were "unaware" they had been breaking the law. This, even after they were warned in writing both by land division and DOBOR, that Dukes beach was not to be used by multiple or separate concessionaires. Just prior to these warnings going out all four companies had wrongly assumed that they were under the Hilton's beach contract. This assumption was the result of Land division telling everyone including me, that these businesses are "party to the Hilton contract," which they were not because the Hilton (BY THEIR OWN ADMISSION), said they de-activated the permit! It was later told to all parties in writing that they must be Hilton employees to work under the Hilton contract but this was never enforced. During this time the Hilton managers were telling me that they never activated the surf instruction portion of the contract. Land division tried to tell the BLNR that they were "unaware that the Hilton de-activated the contract." This was a bold faced lie.

One of the four commercial entities that was cited for encroachment continues to operate commercially on Dukes beach today even though they are without land use permits. The Hilton beach contract should have been revoked as soon as the violations were noted by Mr. Tsujii, especially after citations were issued, but the violations were ignored and no further action was pursued by DLNR. As one who had taken direct interest in the RFP process just prior to the C&K bankruptcy, I thought it was very conspicuous that C&K's personal debt was paid in full by the Hilton hotel, especially given the fact that the permit originally awarded to C&K was to be let to a non-profit! The Hilton is not a non-profit and the total amount of the years rent for C&K was only \$21,600. Do we know how many months they had gone in the hole? Was it three months past due, five months, or was it a whole year that they were allowed to skip on rent? Finally how did the Hilton end up paying \$127,000?; That's \$106,000 more than the whole years rent? The point is DLNR appears to be allowing the Hilton to violate the beach contract with impunity.

This sort of BAD CONTRACTING does have bearing on the Ala Wai Harbor parking area because the Hilton situation can be repeated or copied once a private parking contract runs into trouble. In the likely event that multiple surf schools seek to be included in the parking plan, DOBOR would do better to incorporate wording that strengthens the access rights of non-boaters. If rules are implemented to protect recreational priorities then and only then will rec Inads be permissible for commercial activity. Rules should not be vague on the issue of commercial surf schools. The rules cannot create loop holes that end up giving wide swath to those who would abuse the

beach, they should be enforceable in other words. I point this out because these companies enjoy professional relationships with DOBOR staff. They are naturally inclined to support any DOBOR initiatives especially if they include provisions for surf schools, otherwise its all about playing it close to the edge with DOBOR and the public. If Boating officials are allowed to do contracted parking at the Ala Wai I hope they do not also implement stakeholder contracts with "multiple concessionaires" on the principle that these are "stakeholders," this would contradict the purpose of the rules. Without clear rules governing blue cards unpermitted commercialism will further undermine the principle that the Ala Wai Harbor is a recreational harbor. I believe it is entirely possible to do a fee increase at the Ala Wai without resorting to RFP and possibly the sort of default that lead to the C&K bankruptcy. The ideas we submitted as a coalition back in 2002 are still workable should you feel like looking at them. We wanted to discuss the possibility of joining the heli port area to the old Dukes beach, which is a city and county beach. The stewardship process is an offshoot of the adopt a park plan offered by DOBOR. Thank you.

noaslight@yahoo.com
(808) 258-4518