

SCR 53

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
WATER, LAND, AND AGRICULTURE
and
ECONOMIC DEVELOPMENT, ENVIRONMENT AND TECHNOLOGY**

**Monday, March 28, 2016
2:45 P.M.
State Capitol, Conference Room 224**

**In consideration of
SENATE CONCURRENT RESOLUTION 53/SENATE RESOLUTION 27
URGING THE IMMEDIATE ENFORCEMENT OF THE PROHIBITION ON
COMMERCIAL ACTIVITY UNDER THE 1965 SURFRIDER-ROYAL HAWAIIAN
SECTOR BEACH AGREEMENT, AN EXPLANATION OF IMPLICATIONS OF A
CERTAIN PRE-SETTING PROPOSAL AND PREPARATION OF AN ENVIRONMENTAL
ASSESSMENT**

Senate Concurrent Resolution 53/Senate Resolution 27 urges the immediate enforcement of the prohibition on commercial activity under the 1965 Surfrider-Royal Hawaiian Sector Beach Agreement, an explanation of implications of a certain pre-setting proposal and the preparation of an environmental assessment. **The Department of Land and Natural Resources (Department) opposes these resolutions in light of ongoing steps that the Department is taking to address the pre-setting of beach chairs in Waikiki.**

Act 145, Session Laws of Hawaii 2014, directed the 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 land; and
- 2) Select one public recreational area to be the focus of the working group

The Department convened an internal working group in 2014 and agreed to address pre-setting in Waikiki. Waikiki was chosen because of the large amount of commercial activity that happens on and off Waikiki Beach, and because of the unique issue of private land ownership in the SurfRider-Royal Hawaiian sector of the beach. The Department felt that addressing pre-setting would help to

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
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

address the storage of surfboards, canoes, and other paraphernalia on the beach. As mandated by this Act, a preliminary report of findings and recommendations was prepared and submitted to the Legislature by the Department in 2015, and a final report was prepared and submitted to the Legislature by the Department in 2016.

A meeting with representatives of the hotels in the SurfRider-Royal Hawaiian Sector, the vendors doing business in that sector, the Waikiki Neighborhood Board chair and a Waikiki Improvement District representative was held on August 19, 2015, in which all parties agreed that there is a problem. The Waikiki Improvement Special District Association agreed to take on the project to get the hotels and vendors together to come up with a proposal to present to the Department. The Waikiki Improvement Special District Association provided the proposal to the Department on January 21, 2016. The Department is in the process of formulating a response.

When the Department first started this project, various options were considered:

- 1) The Department could go after the vendors setting up the beach umbrellas. However, vendors tended to plead that they were just setting up for the hotels. If money isn't changing hands, then it is difficult to argue in court that "business" (Hawaii Administrative Rules 13-255-5) is taking place on Waikiki Beach. Both of the Department's Division of Boating and Ocean Recreation and the Division of Conservation and Resource Enforcement have had difficulty enforcing against pre-setting in court.
- 2) The Department could sue the hotels and vendors. However, since the outcome would be uncertain, time consuming and rancorous, this was not felt to be the most efficient course of action.
- 3) The Department could work with the hotels and vendors to come up with a mutually agreeable solution.

The Department has chosen to work with the vendors to come to a mutually agreeable solution, if such is possible, and we continue to work with the hotels and vendors. The Department does not believe that strict and immediate enforcement of the 1965 agreement is efficient or effective, and we would rather deal with all beach storage in a comprehensive manner. Once we have agreement, enforcement will be a key element of ensuring that Waikiki Beach is open to all.

The Department of the Attorney General (AG) has been working with the Department on this project, and has been supportive of the Department's process to date.

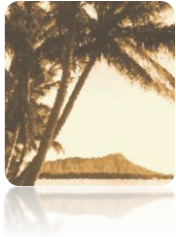
These resolutions request that the AG provide a memorandum on the hotel group's pre-setting proposal. The Department believes this is premature, as the Department has not accepted the proposal as the final outcome, but rather as a starting point for discussion.

These resolutions also request that the Department prepare an environmental assessment under Chapter 343, Hawaii Revised Statutes, before the Board of Land and Natural Resources considers any specific proposal for a new agreement that supplements or supersedes the 1965 SurfRider-Royal

Hawaiian Sector Beach Agreement. The Department notes that it does not have the authority to supplement or supersede this agreement without legislative authorization.

For the reasons above, the Department does not support these resolutions and asks the Legislature to let the Department continue to work with the hotels and vendors to find a solution to pre-setting and storage of equipment on Waikiki Beach. Since this is an item of ongoing concern for the Legislature and the Department, the Legislature could direct the Department to submit a report of our progress on this issue prior to the 2017 Legislative Session.

Thank you for your consideration of this testimony.



WAIKIKI BEACH SPECIAL IMPROVEMENT DISTRICT ASSOCIATION

Testimony Presented Before the
Senate Committee on Water, Land and Agriculture
and
Senate Committee on Economic Development, Environment and Technology

March 28, 2016 at 2:45pm
Conference Room 224

By
Rick Egged, President
Waikiki Beach Special Improvement District Association

SCR53/SR27

URGING THE IMMEDIATE ENFORCEMENT OF THE PROHIBITION OF COMMERCIAL ACTIVITY UNDER THE 1965 SURFRIDER-ROYAL HAWAIIAN SECTOR BEACH AGREEMENT.

Chairs: Gabbard and Wakai, Vice Chairs: Nishihara and Slom, and members of the committees:

The Waikiki Beach Special Improvement District Association (WBSIDA) respectfully opposes SCR53/SR27. This legislation calls for the immediate enforcement of the prohibition on commercial activity in Waikiki under the 1965 Surfrider-Royal Hawaiian Sector Beach Agreement, an explanation of implications of a certain pre-setting proposal, and preparation of an environmental assessment.

The WBSIDA believes the proposed resolution is premature since the WBSIDA and affected Waikiki Beach operators have been working directly with the Department of Land and Natural Resources (DLNR) since October, 2015 to develop a set of beach use guidelines that will address user conflict concerns that have been brought up in Waikiki Beach. The WBSIDA and beach operators working group has been referring to this document as the “Waikiki Beach Recreational Use Guidelines.”

The DLNR is actively working on developing actionable solutions in partnership with the WBSIDA. The 2014 Hawai'i State Legislature passed Act 145 and the DLNR prepared the report “[User Conflicts On Public Recreational Lands](#)” in response. Act 145, Session Laws of Hawaii 2014, directs the Department of Land and Natural Resources 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 chose shall have a history of user conflicts. DLNR staff held two meetings to define the study area (later identified as Waikiki Beach) 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.

The Act 145 Working Group is currently working on revisions to draft recreational use guidelines for Waikīkī Beach based on feedback from the DLNR. The DLNR, in conjunction with the WBSIDA, is working with the hotel owners and beach operators to ensure there is appropriate public access and the operators are in adherence with the terms and conditions of the 1965 Waikīkī Beach Agreement, including the prohibition on commercial activities. **Due to the ongoing activities of the Act 145 Working Group and related ongoing development of the Waikīkī Beach Recreational Use Guidelines, the WBSIDA feels SCR53/SR27 are premature and may be counter-productive to the further development of the Waikīkī Beach Recreational Use Guidelines report and therefore requests the committees hold these resolutions, SCR53/SR27.**

WBSIDA is a non-profit organization which has the ability to partially support and assist with the development of beach improvement and management projects in the Waikīkī district as a public-private partnership. Thank you for the opportunity to testify on this measure.



March 23, 2016

Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Water, Land, and Agriculture

Senator Glenn Wakai, Chair
Senator Sam Slom, Vice Chair
Senate Committee on Economic Development, Environment, and Technology

Testimony in Opposition to Senate Concurrent Resolution (SCR) No. 53 and Senate Resolution (SR) No. 27 (Urging immediate enforcement of the prohibition on commercial activity under the 1965 Surfrider-Royal Hawaiian Sector Beach Agreement, an explanation of implications of a certain pre-setting proposal, and preparation of an environmental assessment.)

Monday, March 28, 2016, at 2:45 p.m., in Conference Room 224

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to express its **opposition to SCR 53 and SR 27**, and to offer comments.

SCR 53 and SR 27. The intent of these Resolutions is to urge immediate enforcement of the prohibition on commercial activity specifically under the 1965 Surfrider-Royal Hawaiian Sector Beach Agreement ("Beach Agreement"); an explanation of implications of a certain pre-setting proposal to be submitted to the State Department of Land and Natural Resources (DLNR) relating to the storage of property on the private beach created by the groin subject to public easement pursuant to the Beach Agreement; and preparation by the DLNR of an environmental assessment before the Board of Land and Natural Resources considers any specific proposal for a new agreement that supplements or supersedes the Beach Agreement.

LURF's Position. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety. LURF members have, for centuries, served as stewards of their respective lands, and voluntarily taken steps to protect and preserve the State's beaches and shoreline; and continue to serve as leaders and representatives of the community to help safeguard these areas for continued public use and enjoyment.

LURF recognizes that these Resolutions point out the need for collaboration amongst different sectors of the community, and the importance for them to work together cooperatively to sustain the viability of the State's natural and cultural resources, while at the same time supporting vital industries, such as tourism, in order to promote and uphold Hawaii's economy.

DLNR Jurisdiction and Separation of Powers. It is LURF's position, however, that there lies a danger in the Legislature attempting to influence, oversee, or even override the efforts of administrative agencies through legislation, by assuming an enforcement role over fact-specific matters, involving specific parties, which are clearly within the jurisdiction of the executive and/or judicial branches of government.¹ The separation of powers or division of government responsibilities into distinct branches is intended to limit any one branch from exercising the core functions of another, and is necessary to prevent the concentration of power and to provide for checks and balances.

While separation of powers is essential to the workings of our democratic system, it is understandable that governmental powers and responsibilities sometimes do overlap, however, LURF believes it may be best for the Legislature not to intercede in specific matters involving the enforcement of provisions under specific agreements, so as not to set a precedent for its involvement and oversight in countless other government agreements, contracts, leases, permits, licenses, or related issues or affairs.

DLNR's Ad-Hoc Working Group. In this particular case, it is concerning that the Resolutions appear to be based, at least in part, on inference and conjecture. Moreover, the ad hoc working group criticized in the Resolutions appears, without further evidence, to have been reasonably organized by the DLNR based on feasibility and without intent to exclude any particular individuals or complainants. LURF in fact understands that the ad hoc working group has already gone through the process of addressing and resolving the issues relating to commercial activity in the area subject to

¹ The legislative branch of government is responsible for enacting the laws of the state and appropriating the money necessary to operate the government; the executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch; and the judicial branch is responsible for interpreting laws and applying their interpretations to controversies brought before it.

the Beach Agreement, and that preliminary consensus guidelines have been successfully developed.²

Shoreline land owners that rely on the continued ability to utilize, manage and protect their property, consider measures and strategies relating to that area critical to conduct their operations and to sustain their businesses. These stakeholders believe measures such as SCR 53/SR 27 are not the appropriate mechanisms necessary to develop and implement improvements and policy for the long-term betterment of the State.

For the above reasons, LURF **opposes SCR 53/SR 27**, and respectfully requests that these Resolutions be held in your Committees.

Thank you for the opportunity to present testimony regarding this matter.

² The final version of the *Recreational Use and Activity Guidelines for the Waikiki Beach Recreational Use Area*, dated December 1, 2015, was submitted to the DLNR on December 7, 2015 for its review and further necessary action.

TESTIMONY BY DOUGLAS MELLER IN SUPPORT OF SCR 53

FOR THE MARCH 28, 2016 2:45 PM JOINT HEARING OF THE
SENATE COMMITTEE ON WATER, LAND, AND AGRICULTURE & THE
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, ENVIRONMENT, AND TECHNOLOGY

Thank you for the opportunity to explain why I support SCR 53.

The 1965 SurfRider-Royal Hawaiian Sector Beach Agreement includes exhibits which designate a "Line A" and a "Line B" over the beach between the eastern end of the Moana SurfRider and the western end of the Royal Hawaiian. "Line A" is mauka of "Line B". The Agreement provides that the beach mauka of "Line A" is privately owned and not subject to a public easement; the beach between "Line A" and "Line B" is privately owned and subject to a public easement; and any beach constructed or accreted makai of "Line B" is publicly owned.

Under the Agreement, for over half a century, the Moana SurfRider, Outrigger, and Royal Hawaiian Resorts have been allowed to install fences and post signs to exclude the public from the "private beach" mauka of "Line A". All three resorts legally operate beach concessions and legally store unrented beach chairs and umbrellas on their "private beach". SCR 53 does not concern the exclusive private commercial use of the "private beach" mauka of "Line A".

SCR 53 concerns Item 9 of the 1965 SurfRider-Royal Hawaiian Sector Beach Agreement and §13-255-6(c), Hawaii Administrative Rules which unambiguously prohibit storage of unrented commercial beach chairs and umbrellas on the private beach subject to a public easement between "Line A" and "Line B". SCR 53 points out that the DLNR has procrastinated enforcement of both a state contract and state rules while secretively negotiating with resorts which are conspicuously illegally storing unrented commercial beach chairs and umbrellas on part of the beach reserved for non-commercial public use. DLNR conduct is unjustified. DLNR conduct could encourage other resorts to engage in illegal commercial activity at other beaches. To put matters into perspective, the Hilton Hawaiian Village has a concession which rents beach equipment, but this concession does not store unrented commercial beach chairs and umbrellas on the beach between the Ala Wai Harbor and Fort DeRussy. The Hale Koa Resort has a concession which rents beach equipment, but this concession does not store unrented commercial beach chairs and umbrellas on the beach makai of Fort DeRussy. And the Sheraton Resort has a concession which rents beach equipment, but this concession does not store unrented commercial beach chairs and umbrellas on the beaches makai of the Halekulani and the Sheraton.

RELEVANT EXCERPTS FROM THE 1965 BEACH AGREEMENT AND STATE RULES

Item 9 of the 1965 SurfRider-Royal Hawaiian Sector Beach Agreement requires that

The State will not conduct or permit any commercial activity of any kind on the public beach in the SurfRider-Royal Hawaiian Sector of Waikiki Beach, including ... the area ... subject to public easement.... The Owners [of the beach subject to public easement and abutting property] will not conduct or permit any commercial activity of any kind on the area ... subject to public easement....

When the DOT was responsible for small boat harbors, the DOT adopted rules to prohibit storage of unrented commercial beach chairs and umbrellas on the part of Waikiki Beach subject to a public easement under the SurfRider-Royal Hawaiian Sector Beach Agreement. When responsibility for small boat harbors was transferred to the DLNR, the DLNR adopted the following rules.

HAWAII ADMINISTRATIVE RULES TITLE 13 SUBTITLE 11 PART III CHAPTER 255 WAIKIKI BEACH

§13-255-5 Definitions. As used in this part, unless the context clearly indicates otherwise:

“Waikiki Beach” means any and all lands . . . from the . . . Elks Club . . . to . . . Fort DeRussy . . . over which the State of Hawaii . . . acquires an easement for the use of the public as a bathing beach and for passing over and along by foot. . . .

§13-255-6 Waikiki Beach uses and activities; restrictions. . . .

(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. . . .

§13-255-7 Penalties. Any person who is guilty of violating these rules shall be fined . . . as provided in section 200-14, Hawaii Revised Statutes.

§13-255-8 Powers of arrest. Any law enforcement officer or any duly authorized employee, agent, or representative of the department who observes any violation by any person of these rules may forthwith arrest the person without a warrant.

§13-255-9 Taking legal custody of property. As incident to a lawful arrest, the arresting authority may take legal custody of any personal property which is the subject of or related to any violation of these rules. The property may be released only upon approval by the court which has jurisdiction of the case.

§13-255-10 Attorney general. The attorney general may bring appropriate proceedings to enjoin the continuance of any act or omission in violation of these rules.

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

Doc. # 1100

LAND COURT

CLERK

ASSISTANT REGISTRAR

DEC 28 1965

RECEIVED FOR REGISTRATION

J. O'ROCK 30 A. D.M.

NOTE: ON CERTIFICATE NO. _____

IN REGISTRATION BOOK PAGE _____

Amerson
ASSISTANT REGISTRAR

TERMINAL OF DEED OF THIS ISSUED
AND RECORDED H.C.

REGISTRATION NO. _____ PAGE _____

RECORDS SECTION

OFFICE OF THE ASSISTANT REGISTRAR

LAND COURT

28649.
12804.
94690.
94691.
47595.
73561.

EXHIBIT 1

RECORDATION REQUESTED

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

AFTER RECORDATION, RETURN TO:

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

RETURN BY: MAIL () PICKUP ()

65-47088

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED JAN 20 1965
BOOK 5219 PAGE 181
65 DEC 28 AM 9:55

[Signature]
INDEXED REGISTER

Certified to be a true and correct copy
of the original presented for record.
MICHIKI ADACHI, Registrar.

Clark

AKV

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

SURFRIDER-ROYAL HAWAIIAN SECTOR BEACH AGREEMENT

THIS AGREEMENT, made as of the 28th day of
May, 1965, by and between the STATE OF HAWAII,
herein called the "State", and the undersigned owners of
interests in land abutting Waikiki Beach in Honolulu, Hawaii,
herein called the "Owners",

WITNESSETH THAT:

WHEREAS, the parties hereto, or their predecessors
in title and other property owners, by the Waikiki Beach
Reclamation Main Agreement, recorded in the Hawaii Bureau of
Conveyances in Book 1034, Page 11, and also recorded in Book
1047, Page 176, the Supplementary Agreement recorded in Book
1045, Page 141, and the Bishop Estate Agreement, recorded in
Book 1045, Page 131, created a public easement for a bathing
beach and foot passage along Waikiki Beach, including a
portion thereof extending from the southern boundary of
the SurfRider Hotel to the northern boundary of the Royal
Hawaiian Hotel (herein called the "SurfRider-Royal Hawaiian
Sector") and lying within 75 feet shoreward of mean highwater
mark along said beach as it may exist from time to time and
seaward of Line A, described in Exhibit A and shown on

*12204, 24029, 46043
42393 & 73567 per
book 423-55
as per December 1965
Richard L. Espinosa*

*on CT 28644 from Ins. 342-55
13th October 1965
Richard L. Espinosa*

Exhibit B attached hereto and made parts hereof; and

WHEREAS, the parties hereto desire to promote and facilitate the improvement of Waikiki Beach as proposed by the U. S. Army Engineer District, Honolulu, in its Cooperative Beach Erosion Control Study dated 9 August 1963 (herein called the "Cooperative Project"), seaward of Line B as described in Exhibit A and shown on Exhibit B, and to provide for better maintenance and control of said beach; and

WHEREAS, by the terms of Item 3(c), Section 1B, Act 201, S.L.H. 1963, as amended by Act 31, S.L.H. 1964, any improvements to the Kuhio Beach section of Waikiki Beach as provided by such Act, as amended, must be held in abeyance until the owners of at least two-thirds of the property along Waikiki Beach in the SurfRider-Royal Hawaiian Sector have entered into an agreement with the State to so fix the boundaries of their private properties along said beach that no accretion to private land along said beach shall accrue thenceforth,

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED as follows:

1. The State will use its best efforts to construct the beach seaward of Line B in the SurfRider-Royal Hawaiian Sector substantially in accordance with the Cooperative Project.

2. The Owners hereby approve and consent to the improvement of Waikiki Beach substantially in accordance with the Cooperative Project and the maintenance, preservation and restoration thereof as may be necessary from time

to time, and in furtherance thereof agree to abstain from raising or making any protest, objection or complaint, in court or otherwise, against such improvement.

3. The Owners will release and quitclaim to the State forever all of their respective estate, right, title and interest, including littoral rights, in and to the SurfRider-Royal Hawaiian Sector of Waikiki Beach now or from time to time hereafter existing seaward of Line B, whether created by construction or otherwise, reserving to the Owners the right for themselves, their assigns, employees, officers, guests and all persons under them of full and free access between their respective abutting lands and the sea across said beach and to use said beach for a bathing beach and foot passage.

4. The State will not erect, place or suffer in the SurfRider-Royal Hawaiian Sector of Waikiki Beach seaward of Line B any fence, wall, building, wharf, structure, road, walkway, machine or other obstruction of any kind, except such as may be necessary to be used in connection with such improvement, maintenance, preservation or restoration and except not more than two (2) lifeguard towers. The State will consult the Owners regarding the location of retaining walls, groins, lifeguard towers and other structures before the construction thereof. Upon completion or abandonment of such work the State will remove all obstructions except such retaining walls, groins or other structures as may be necessary for the preservation of that part of the beach which has been constructed, which shall be as low as possible consistent with reasonable engineering requirements,

and such lifeguard towers, and subject to the above exceptions will forever thereafter keep said beach free and clear of obstructions and open for use of the public for a bathing beach and foot passage. The State will protect and preserve all existing beach between Lines A and B from any diminution whatsoever as a result of any work in connection with the Cooperative Project and specifically will not remove the groin now situated near the north end of the SurfRider-Royal Hawaiian Sector without first constructing a replacement groin at or near the same location substantially in accordance with the Cooperative Project.

5. The State will release and quitclaim to the respective Owners, their heirs, successors and assigns, forever, severally in proportion to their respective frontages along Line A, as shown on Exhibit B hereof, contemporaneously with the Owners' conveyance to the State provided in paragraph 3 hereof, all the estate, right, title and interest of the State in and to all the land of the SurfRider-Royal Hawaiian Sector of Waikiki Beach between Lines A and B, as described in Exhibit A and shown on Exhibit B; PROVIDED, HOWEVER, that said land between Lines A and B shall remain subject to the public easement and all the terms and conditions thereof provided by the Waikiki Beach Reclamation Main Agreement recorded in the Hawaii Bureau of Conveyances in Book 1034, Page 11, and also recorded in Book 1047, Page 176, and the Bishop Estate Agreement, recorded in Book 1045, Page 131, as modified herein, until a beach at least seventy-five (75) feet wide shall have been created seaward of Line B along its entire length, in the SurfRider-Royal Hawaiian

Sector, whereupon said easement shall terminate.

6. The Owners will at their own expense, concurrently with the State's construction of beach seaward of Line B, bring their respective areas of beach between Lines A and B up to the finished grade of and equivalent in quality to the beach constructed seaward of Line B. The Owners will not at any time in the SurfRider-Royal Hawaiian Sector of Waikiki Beach between Lines A and B erect or place any building or other structure of any kind, except fences or hedges for the purpose of marking the boundaries of their respective lands.

7. No beach, island or other land or structure whatsoever shall be constructed or permitted to extend in excess of two hundred twenty (220) feet seaward from Line B in the SurfRider-Royal Hawaiian Sector of Waikiki Beach, except for groins required by the Cooperative Project. The State will take all reasonable measures to prevent or remove any such excess beach or land, subject to the availability of funds therefor, and in case of its failure to do so diligently, the Owners or any of them affected thereby may take any such measures and retain or dispose of any material removed.

8. The State will at all times hereafter maintain and keep all of the public beach in the SurfRider-Royal Hawaiian Sector of Waikiki Beach, including all beach seaward of Line B and also the area between Lines A and B subject to public easement while so subject, in a neat and sanitary condition, subject to the availability of funds, and, to the extent permitted by law, policed adequately to assure its

fullest use by the public for a bathing beach and foot passage.

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

10. This Agreement shall be deemed a several and not joint agreement between the State and the respective Owners, may be executed in two or more counterparts, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, and shall not become effective for any purpose unless within one year from the date hereof (a) this Agreement shall be duly executed by the State, with the approval of its Governor, and Owners for the time being owning all legal title and interest in the abutting land along at least two-thirds of Line A, and (b) the State shall be duly authorized to make its conveyances herein provided for. Upon becoming effective this Agreement shall then supersede said Waikiki Beach Reclamation Agreements as to the SurfRider-Royal Hawaiian Sector of Waikiki Beach.

IN WITNESS WHEREOF, the parties hereto have caused

this instrument to be duly executed the day and year first above written.

STATE OF HAWAII

By: *John A. Burns*
Chairman and Member
Board of Land and
Natural Resources



And By: *L. L. Linn*
Member
Board of Land and
Natural Resources

APPROVED:

John A. Burns
JOHN A. BURNS
Governor, State of Hawaii

Bert T. Kobayashi
BERT T. KOBAYASHI
Attorney General

Fujio Matsuda
FUJIO MATSUDA
Director of Transportation

KOKUSAI KOGYO KABUSHIKI KAISHA,
a Japan Corporation

By: *Ryo Nagasawa*
RYO. NAGASAWA
EXECUTIVE DIRECTOR
KOKUSAI KOGYO CO., LTD.

HAWAIIAN TRUST COMPANY, LIMITED,
as Trustee under the Will and of
the Estate of Emily Catharine
Judd, deceased, and not individually

By: *K. A. Deane*
VICE-PRESIDENT

By: *Rueben*
ASSISTANT SECRETARY



Emily Wright Burke
EMILY WRIGHT BURKE

Helen Judd Massey
HELEN JUDD MASSEY

William Portzman Massey, Jr.
WILLIAM PORTZMAN MASSEY, JR.

Ruth Farley Massey
RUTH FARLEY MASSEY

APPROVED
AS TO FORM

1 - 3 1965

Rye M. Anderson



THE QUEEN'S HOSPITAL

By: E. E. Nease
ITS PRESIDENT

By: R. A. Deussen
ITS SECRETARY

Edwin P. [unclear]

Frank E. Midkiff

Richard [unclear]

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF BERNICE PAUHI
BISHOP, DECEASED

APPROVED AS TO FORM
ROBERTSON, DASTLE & ANTHONY
BY: [Signature]

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS.

On this 15th day of July, 1965,
before me appeared RYO NAGASAWA, to me
personally known, who, being by me duly sworn, did say that he
is the EXECUTIVE DIRECTOR of KOKUSAI KOGYO KABUSHIKI
KAISHA, a Japan corporation; that the seal affixed to the
foregoing instrument is the corporate seal of said corporation,
and that the instrument was signed and sealed in behalf of
said corporation by authority of its Board of Directors, and
the said RYO NAGASAWA acknowledged said
instrument to be the free act and deed of said corporation.

Louis A. Gallo
Louis A. Gallo
Consul of the United States of America
Notary Public, First Judicial
Circuit, State of Hawaii

My Commission expires:

EXPIRES 10 26 67
TAKEN BY LS
PRO. MADE FOR LS
L. M. OY. DIV. 2710

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU)

SS.

LIBER 5219 PAGE 190

On this 7th day of June, 1965,
before me appeared K. R. NURSE and
R. W. DAVIS, to me personally known,
who, being by me duly sworn, did say that they are the
VICE-PRESIDENT and ASSISTANT SECRETARY,
respectively, of HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii
corporation, Trustee under the Will and of the Estate of Emily
Catharine Judd, deceased; that the seal affixed to the fore-
going instrument is the corporate seal of said corporation; that
said instrument was signed and sealed in behalf of said corpora-
tion by authority of its Board of Directors; and said
K. R. NURSE and R. W. DAVIS
acknowledged that they executed the same as the free act and
deed of said corporation as such Trustee.

John X. [Signature]
Notary Public, First Judicial
Circuit, State of Hawaii,

My Commission expires: 12-2-67



STATE OF Massachusetts }
COUNTY OF Stoughton } SS.

5219 PAGE 191

On this 16th day of June, 1965,
before me personally appeared EMILY WRIGHT BURKE, to me known
to be the person described in and who executed the foregoing
instrument and acknowledged that she executed the same as her
free act and deed.

Robert W. Belmont
Notary Public
My Commission Expires Nov. 16, 1965.

STATE OF Virginia }
COUNTY OF Frederick } SS.



On this 25 day of June, 1965,
before me personally appeared HELEN JUDD MASSEY, to me known to
be the person described in and who executed the foregoing
instrument and acknowledged that she executed the same as her
free act and deed.

Elizabeth C. Wolfe
Notary Public
My Commission Expires July 14, 1968



STATE OF Virginia }
COUNTY OF Frederick } SS.

On this 25 day of June, 1965,
before me personally appeared WILLIAM PORTZMAN MASSEY, JR.,
to me known to be the person described in and who executed the
foregoing instrument and acknowledged that he executed the
same as his free act and deed.

Elizabeth C. Wolfe
Notary Public
My Commission Expires July 14, 1968



STATE OF Virginia }
COUNTY OF Fredricks } SS.

NUMBER **5219** PAGE **192**

On this 25 day of June, 1965,
before me personally appeared RUTH FARLEY MASSEY, to me known
to be the person described in and who executed the foregoing
instrument and acknowledged that she executed the same as her
free act and deed.

Elizabeth C. Wolfe
Notary Public



STATE OF HAWAII }
CITY AND COUNTY OF HONOLULU } SS.

On this 8th day of June, 1965,
before me appeared E. E. BLACK and
K. R. NURSE, to me personally known,
who, being by me duly sworn, did say that they are the
PRESIDENT and SECRETARY,
respectively, of THE QUEEN'S HOSPITAL, an eleemosynary
corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and that
the foregoing instrument was signed and sealed in behalf of
said corporation by authority of its Board of Directors, and
the said E. E. BLACK and K. R. NURSE
acknowledged the foregoing instrument to be the free act and
deed of said corporation.

John A. [Signature]
Notary Public, First Judicial
Circuit, State of Hawaii

My Commission expires: 12-3-67



On this 3rd day of August, 1965,
before me personally appeared Edwin P. Murray,
Frank E. Midkiff and Richard Lyman, Jr.,
Trustees under the Will and of the Estate of Bernice Pauahi
Bishop, deceased, to me known to be the persons described in
and who severally executed the foregoing instrument and
severally acknowledged that they executed the same as their
free act and deed as such Trustees.



Elvera Black
Notary Public, First Judicial
Circuit, State of Hawaii

My Commission expires: MAR 31 1968

SURFRIDER-ROYAL HAWAIIAN SECTOR
BEACH AGREEMENT

LINE A AND LINE B

Waikiki, Honolulu, Oahu, Hawaii

LINE A. Beginning at a "+" cut on top of seawall at the west end of this line, being the southeast corner of Lot A, as shown on Map 2 of Land Court Application 1316, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LEAHI" being 6125.86 feet North and 6105.36 feet West, thence running by azimuths measured clockwise from True South:-

1. 268° 12' 97.45 feet along R.P. 2560, L.C.Aw. 1445, Apana 1 to Kanemakua;
2. 170° 45' 5.50 feet along R.P. 2560, L.C.Aw. 1445, Apana 1 to Kanemakua;
3. 261° 19' 233.06 feet along R.P. 2560, L.C.Aw. 1445, Apana 1 to Kanemakua;
4. 271° 16' 109.04 feet along R.P. 2560, L.C.Aw. 1445, Apana 1 to Kanemakua and along Lot 3, as shown on Map 1 of Land Court Consolidation 14;
5. 275° 25' 152.50 feet along Lot 3, as shown on Map 1 of Land Court Consolidation 14 and along Lot 4, as shown on Map 2 of Land Court Consolidation 12;
6. 287° 47' 131.90 feet along Lot 4, as shown on Map 2 of Land Court Consolidation 12 and along Lot D, as shown on Map 2 of Land Court Application 1071;
7. 297° 32' 141.50 feet along Lot D, as shown on Map 2 of Land Court Application 1071 and along Lot A, as shown on Map 1 of Land Court Application 1677;
8. 310° 17' 61.80 feet along Lot A, as shown on Map 1 of Land Court Application 1677;

- | | | |
|-----|----------|---|
| 9. | 291° 29' | 88.92 feet along Lot A, as shown on Map 1 of Land Court Application 1677; |
| 10. | 293° 38' | 66.50 feet along Lot A, as shown on Map 1 of Land Court Application 1677; |
| 11. | 302° 30' | 10.29 feet along Lot A, as shown on Map 1 of Land Court Application 1677; |
| 12. | 301° 38' | 187.26 feet along Lot B, as shown on Map 3, Lot A-2, as shown on Map 4 and Lots A-1-A and A-1-B, as shown on Map 5, all of Land Court Application 1274, to a brass pin in concrete at the easterly end of said Line A, being the south corner of Lot A-1-B and the west corner of Lot A-1-C, as shown on Map 5 of said Land Court Application 1274. |

LINE B. Situate at Waikiki, Honolulu, Oahu, Hawaii.

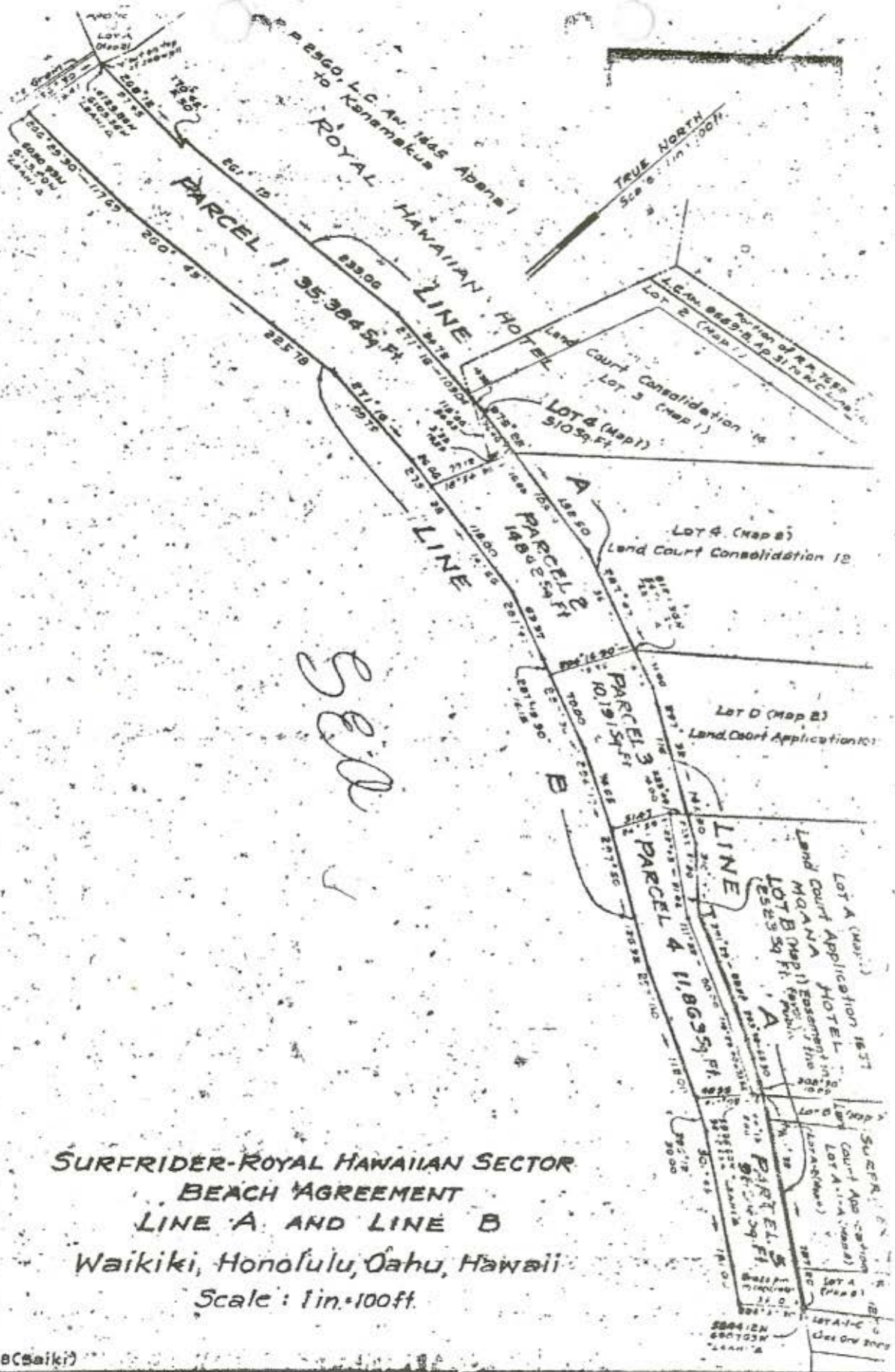
Beginning at the west end of this line, the true azimuth and distance to the southeast corner of Lot A, as shown on Map 2 of Land Court Application 1316 being 186° 30' 75.41 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "LEAHI" being 6050.93 feet North and 6113.90 feet West, thence running by azimuths measured clockwise from True South:-

- | | | |
|----|--------------|--------------|
| 1. | 266° 29' 30" | 117.69 feet; |
| 2. | 260° 45' | 225.78 feet; |
| 3. | 271° 16' | 99.79 feet; |
| 4. | 275° 25' | 141.66 feet; |
| 5. | 287° 47' | 63.37 feet; |
| 6. | 287° 19' 30" | 16.15 feet; |
| 7. | 287° 30' | 70.00 feet; |
| 8. | 294° 17' | 74.65 feet; |
| 9. | 297° 50' | 126.32 feet; |

- 10. 293° 00' 118.00 feet;
- 11. 296° 12' 30.00 feet;
- 12. 301° 45' 151.00 feet to the end of said Line B; the true azimuth and distance, to a brass pin in concrete at the south corner of Lot A-1-B and the west corner of Lot A-1-C, as shown on Map 5 of Land Court Application 1274 being 224° 57' 30" 55.10 feet.

Description Checked





See 1

**SURFRIDER-ROYAL HAWAIIAN SECTOR
 BEACH AGREEMENT
 LINE A AND LINE B
 Waikiki, Honolulu, Oahu, Hawaii
 Scale : 1 in = 100 ft.**

JOB
 C. BK B(Saiki)

TAX MAP C-6-Q1102

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

C. S. P. No. 14617

K 5-5/25/69