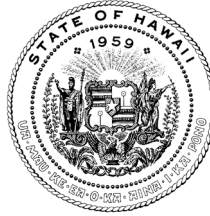


DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
WATER & LAND

Tuesday, March 15, 2022
8:30 AM

State Capitol, Via Videoconference, Conference Room 430

In consideration of
SENATE BILL 3377, SENATE DRAFT 1
RELATING TO COMMERCIAL ACTIVITIES ON BEACHES

Senate Bill 3377, Senate Draft 1 prohibits any person from presetting commercial beach equipment on beaches encumbered with easements in favor of the public. **The Department of Land and Natural Resources (Department) supports this measure.**

The Department has worked to address the presetting of beach umbrellas and chairs on Waikīkī Beach. The Department's Division of Conservation and Resources Enforcement officers have issued citations to the commercial operators, but unfortunately the court dismissed the citations due to the fact that the concessionaire stated the customers had prior reservations and they were merely setting up the equipment in advance of them arriving.

The Department has received numerous complaints about presetting of equipment on Waikīkī Beach and has spent substantial time advising the operators that presetting is not allowed; however, the issues have continued to persist due to the lack of a clear definition of presetting. This bill will help the Department address the complaints and provide clarification on the definition.

Thank you for the opportunity to testify on this measure.

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

SB-3377-SD-1

Submitted on: 3/13/2022 11:12:24 PM

Testimony for WAL on 3/15/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Meghan Statts	DLNR	Support	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

SB-3377-SD-1

Submitted on: 3/13/2022 11:13:19 PM

Testimony for WAL on 3/15/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Todd Tashima	DLNR	Support	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.



Hawai'i Convention Center
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David Y. Ige
Governor

John De Fries
President and Chief Executive Officer

Statement of
JOHN DE FRIES

Hawai'i Tourism Authority
before the
COMMITTEE ON WATER & LAND

March 15, 2022
8:30 a.m.
State Capitol
via videoconference

In consideration of
SENATE BILL NO. 3377 SD1
RELATING TO COMMERCIAL ACTIVITIES ON BEACHES

Aloha Chair Tarnas, Vice Chair Branco, and members of the Committee on Water & Land,

We appreciate the opportunity to provide testimony in **support** of SB3377 SD1, which prohibits any person from presetting commercial beach equipment on beaches encumbered with easements in favor of the public.

The Destination Management Action Plans, also known as DMAPs, were developed through significant and meaningful collaboration and direction of Hawai'i's communities. Contained within the six community-driven DMAPs are hundreds of actions and sub-actions identified by kama'āina that have become our commitment to our kama'āina. These actions and sub-actions speak to the need to strike a balance between the visitor industry and our residents.

This measure, which would address the presetting of commercial beach equipment, is one that addresses the balance between our residents' ability to freely utilize our beaches and the visitor industry's desire to provide amenities to their guests. Our beaches are a shared resource and, as such, should be shared in a way that affords residents the opportunity to utilize these resources without having to compete against preset and unutilized beach amenities.

We appreciate the opportunity to offer these comments in **support** of SB3377 SD1. Mahalo.



Aloha Beach Services
2365 Kalakaua Ave.
Honolulu, HI 96815
Robelloh001@hawaii.rr.com

Testimonial against SB 3377 SD1, Relating To Commercial Activities on the Beaches.

Submitted to Senate Committee on Water & Land
8:30am, March 15, 2022 State Capitol via videoconference

I would like to thank Chair Tarnas, Vice Chair Branco, and Committee on Water & Land for hearing my testimony. I am **against** SB 3377 SD1 as it is written but am in support of some the following modifications.

My name is Harry D. Robello. I am known as Didi on the beach. I am a second generation Waikiki Beach Boy and a third generation Kahanamoku descendant. My father was Harry S. Robello. He was the last of the original Waikiki Beach Boys. He ran the Outrigger Canoe Club's beach services before they moved to their current location near Elks Club. My mother was Barbara Kahanamoku, the daughter of William P. Kahanamoku. Bill as he was called, was one of Duke's brothers who my dad worked alongside of as Waikiki Beach Boys.

We have been operating our family business, started by my dad in 1959. Our first beach services was at the Sheraton Maui, then we operated at the Royal Hawaiian Hotel, Moana Surfrider Hotel and Sheraton Waikiki since the late 50's early 60's. To this day, "Aloha Beach Services" is still at the Moana Surfrider Hotel. I have been on Waikiki beach my entire life. I worked the beach as a little boy picking up trash, beach chairs and towels, doing whatever I was told to do by the Waikiki Beach Boys. I was a "Garoot". I took over the business in 1983 from my dad at 21 years old. I believe we are the longest operating beach concession in the State of Hawaii.

Umbrella Sets

Based on a general survey of the area, there are approximately at least 300 umbrella sets setup each day between Hilton Hawaiian Village to the Kapahulu Groin. The umbrellas are not setup in one uniform and/or contiguous line but are setup in different sections along the beach (**figure 1a-1c**). It is also very rare to have all the umbrellas setup at the same time. When that occurs it is usually during peak travel season.

Figure 1-a



Figure 1-b



Figure 1-c



The 300 umbrella sets equate to protecting 600 people (2 people per every umbrella set). However, the more accurate estimate would be about 1,000 people because over half of them are used by families who all crowd under them for protection from the sun.

For a second, imagine if there were no commercially available umbrellas sets at Waikiki Beach to rent and instead beachgoers had to buy all low cost, lightweight umbrellas sets that can fly away and potentially hurt other beachgoers. What would happen to the umbrella and beach chair sets after each use? Would it be left on the beach not put away every afternoon? Without a doubt, the homeless would have a field day. The existing trash cans on the beach would not be able to handle it. Our commercial beach equipment has a durable life of at least 10 years. That's because it is good quality, it is installed and anchored safely by professionals, put away and stored by the same professionals at the concession stands that they are rented from. I am

certain that not one stand in these areas are storing any of their equipment, including surfboards and beach equipment on the public lands or easements OVERNIGHT.

Commented [TM1]: Is this true?

The reality is that many of the low cost lightweight umbrellas that are purchased at retail stores end up being abandoned on Waikiki Beach because it is too cumbersome and cheap enough to just dump. You can't pass a homeless camp in Waikiki, on the beach or the sidewalk that doesn't have these umbrella and chairs spread about cockroaching the public space day and night in the same spot. (Figure 2)

Figure 2



Umbrella Set User Conflict

Now, let's say Mr. Wong from Kapahulu comes down with his wife and three grandchildren and at 9am which is a typical time when beachgoers arrive at Waikiki Beach. He picks a spot to put his two small umbrellas and beach chairs on the beach with his beach towels, boogie boards, cooler stroller, etc. Then, Mr. Wong takes his family to eat breakfast at Dukes Restaurant (Outrigger Waikiki) because it is the closest to his umbrella and chairs. Typically, it would take 20 minutes to be seated at a table, 15 minutes to order the food, and 20 minutes for the food to come out. After eating for 45 minutes, approximately one hour and a half goes by with his umbrellas and chairs waiting for Mr. Wong and his family to come back. Perfect right?

Now comes Mr. Silva from Kuliouou with his two kids and wife. Same plan, but he knows that he can rent the umbrella and chair set on the beach since he doesn't want to lug everything from the car. His parking option would have been a street parking meter, hotel parking, or worse yet, all the way at Kapiolani Park. He arrives at Aloha Beach Services desk to rent an umbrella and chair set ("commercial beach equipment") that can only be put up in a designated spot for four hours with an option to extend. He may not stay longer because it may get too hot for Mr. Silva and his ohana. The commercial beach equipment comes with two lounge chairs and a 7-foot-wide span umbrella big enough for the entire family to share. The professional Waikiki beach boys put it all up for his family when they get there! Aloha Beach Services commercial beach equipment is "NOT" exclusive for hotel guest only, as some would lead you to believe.

Now, Mr. Horvath from Hungary and his five member ohana is staying at one of the Waikiki beachfront hotels. He doesn't have the luxury of bringing his own umbrella and chair set with him from Hungary. He also doesn't want to purchase an umbrella and chair set in Hawaii and worry about taking it home or what to do with it when he leaves Hawaii because he would need to leave it behind in the hotel room or leave it on the beach. So Mr. Horvath decides to rent his

umbrella and chairs from Aloha Beach Services. He also wants to do the same activities with his family as Mr. Silva and his ohana at Waikiki beach. He and Mr. Silva though, can't go to breakfast or lunch, nor can they take the family on a catamaran ride. They have to sit under their commercial beach equipment or risk having it be taken away. So if Mr. Horvath and his ohana had left for lunch, under the current proposed SB 3377 SD1, Aloha Beach Services would be required to pick up the commercial beach equipment because Mr. Horvath isn't using it. Who will be responsible for their belongings left on the beach after Aloha Beach Services removes the commercial beach equipment? It shouldn't be the Waikiki Beach Boy and/or concessionaire's responsibility. Who is going to be responsible for the Rolex they now claim was in their bag? This has happened before! Will this be inviting more theft on the beach by leaving their things out for anyone to grab?

Both Mr. Silva and Mr. Horvath, will need to pack all their personal belongings including their stroller and bags to the restaurant. They will not be guaranteed an area to sunbathe and recreate on the beach when they return from breakfast or lunch just like Mr. Wong. Mr. Wong owns his umbrella and chair set so does he need to follow the same rules as Mr. Silva and Mr. Horvat? If he gets an exemption, is that fair? Just because he brought his own beach equipment as oppose to renting it from Aloha Beach Services, does that give him the exemption or free pass to not follow the rules as outlined in SB 3377 SD1 because it is not considered commercial beach equipment? Or what if Mr. Wong rented his commercial beach equipment from a store that is located outside of Waikiki? Would this be considered commercial beach equipment?

In the case of both Mr. Silva and Mr. Horvath, the commercial beach equipment were anchored and setup safely by a professional Waikiki Beach Boys. The commercial beach equipment is fully insured in the very rare and unfortunate event a strong gust of wind causes the commercial umbrella to fly up and hits a beachgoer.

On the other hand, Mr. Wong's umbrella is unanchored, unattended, and uninsured. It is very common on a daily basis to witness beachgoers running away from an unanchored umbrellas turning into projectiles. Does that sound safe? Who will be responsible for that?

Homeless Issues

Homeless on Waikiki beach has been and continues to be a major issue for all beachgoers. The homeless live on the beach all day, all night, 365 days a year with umbrellas, pop up tents, chairs, boogie boards, beach towels that people leave behind (see Figure 3a-3e).

Figure 3-a



Figure 3-b



Figure 3-c



Figure 3-d




Figure 3-e



Beachgoers like Mr. Horvath see the homeless enjoy 'LIVING 'on Waikiki Beach, day and night, yet, his only viable way to enjoy his days at the beach is to rent a commercial beach equipment but if doesn't sit at his chair the entire time he is at risk of losing his spot. It is unfortunate that tourists like Mr. Horvath who are only here for one week are forced to lose their spot where as the homeless are able to come and go as they please.

If the State is to remove the stored equipment, they must give a two weeks written notice by posting a sign on the equipment. See Figure 4a-4b. Then they have to wait a minimum of 72 hours and sometimes weeks to evict them. What's wrong with this picture?

A photograph of a beach scene. In the foreground, a red beach umbrella with a blue stripe is partially collapsed on the sand. To its left is a blue inflatable ring. A long blue pole with a green brush head lies on the sand between them. In the background, a white metal fence separates the beach from a row of green bushes and palm trees. Behind the bushes is a multi-story building with many windows, likely a hotel or apartment complex.



**INFORMATION REGARDING ILLEGAL ACTIVITIES
IN A STATE SMALL BOAT HARBOR AND WAIKIKI BEACH**

You are in violation of one or more of the following rules
and may be subject to criminal penalties:

HAR 13-232-1 Sanitation
Any property or facility used at a small boat harbor shall be kept in a condition of reasonable safety and sanitation as its use or condition is a common nuisance or potential danger to public health.

HAR 13-232-3 Garbage & Other Offensive Matter
Anything that gives off an offensive odor shall not be disposed of as garbage in Harbor facilities.

HAR 13-232-6 Littering
Littering is not allowed.

HAR 13-232-41 Storage
Storage of personal property is not allowed in public areas of a small boat harbor.

HAR 13-232-43 (a) Structures
No building structure or other site improvement shall be erected or constructed in a state boating facility.

HAR 13-232-57 (a)
No person shall attempt and creating or contributing to colonization of another island or creation of a colony prohibited on DOBOR property, and shall be fined not less than \$50 and not more than \$1,000 or sentenced to a term of imprisonment of not more than thirty days for each violation.

HAR 13-232-58
No person shall print or canvas door-to-door or canvassing or camping or both in any DOBOR facility or property is prohibited except on board vessel with the proper authorization of the department.

HAR 13-233-6 Parking
No vehicle shall stop, park or permit to remain halting in a small boat harbor except as authorized or in accordance with official parking regulations.

HAR 13-255-6 Waikiki Beach uses and activities; restrictions.
(a) Any and all lands along the shores of the island of Oahu from the Diamond Head boundary of the Elks Club to the Diamond Head boundary of Fort DeRussy.
(e) Structures and obstructions prohibited.

POSTED BY C. P. Hicks
DATE 02/15/2002 TIME 10:16 AM
LOCATION *Sigatoka Island, American Samoa*

Our locals and guests all come to enjoy Waikiki Beach. We are here to help and provide for their enjoyment and safety, professionally and respectfully. I would like to share with you how Aloha Beach Services operates its commercial beach equipment.

At around 8am, we start our water activities. During the busy season (spring break, summer or Christmas), most often a staff member is there from 5am prepping for the busy day ahead. Often during Christmas season, the line for umbrella sets starts forming around 6am at our main stand. The customers come first thing in the morning to get an umbrella set and a spot because a lot of times we are sold out as early as 7am. There is still a lot of empty space on the beach at this early hours.

Some customers leave their seating area to eat breakfast at nearby restaurants while some start their day at the beach. At the other seasonal stand located on the east end of the Moana Surfrider hotel, an Aloha Beach Services employee opens up at around 7am. Aloha Beach Services only opens that stand up during the busy season. That stand is sold out by 8:30-9:00am. We have 25 sets at the main stand (see Figure 5a) and 50 at the seasonal stand (Figure 5b). Our main stand is located between the Diamond Head side of Outrigger Hotel wall on the Moana Hotel property and Ewa side of the lifeguard tower 2A. It is approximately a 40 by 40-foot area including space to walk in between.

Figure 5a Umbrella setup at the Main stand



Figure 5b Umbrella setup at the seasonal stand



Fronting the private beach of the Moana between the Moana bar and the lifeguard tower 2A is open space except for the catamaran. Our seasonal stand is located in front of the Moana Beach House Restaurant. During high demand, we start in front of the Moana bar area towards Diamond Head to just in front of the gate that leads to the Moana Diamond lawn area. That area is mostly occupied by homeless encampments. We keep that area as clean as possible from trash and hypodermic needles. See Figure 6. We are not qualified or are able to safely dispose of the needles so we call Moana Surfrider hotel security for qualified safe disposal and keep everyone away from the area till it is disposed of. This area is very dirty. If we weren't there to observe and clean, it would be a hazardous area to be in.

Figure 6

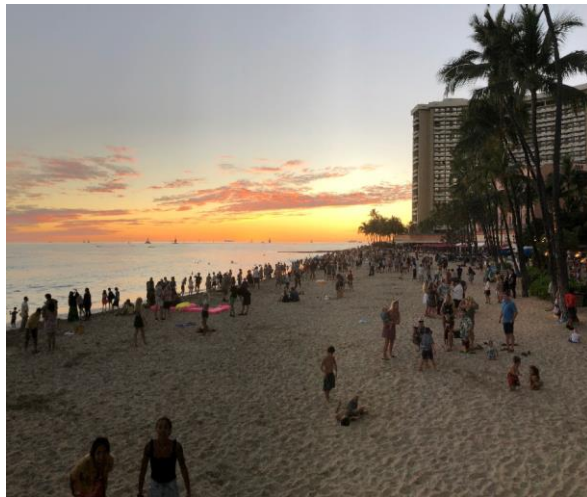


There are no catamarans in this area and we do not rent any surf or SUP boards. The shore break in this area during the summer is to dangerous. When demand isn't at full capacity we start in front of our desk off to the right and extend again towards the Diamond head side of the

beach. Some days do start off slow then explode around mid-morning early afternoon. We have never gone all the way across the beach front to the end of the lawn area or say to the boarder of the city side of the beach. When the beach is at its widest we don't have to stretch out across the beach. It is easier to keep as much of the business in front of our desk so we can watch against theft and don't have to carry the equipment so far.

We close our umbrella operations at both stands at 4pm during Christmas break and spring break and 5pm during the summer months. I have noticed that by practicing this when we are all shut down the beach fills right back up with the people who enjoy the cooling down of the evening and come to grab space to enjoy the sunsets. See Figure 7. I feel if all the stands closed their umbrella operations at the same 4pm time or 5pm during summer season, it would level the playing field and open the beach up for the evening crowd. When an operation rents their equipment till 5 or 6 pm everyone has to do the same because the people who rent from us till 4pm complain why they are still open and want to stay longer. We could charge less for the shorter time but that is loss in revenue.

Figure 7



Proposed Modification

One possible solution is that we have a designated area for the commercial beach equipment (not exclusive) meaning if an individual sat in these areas no one can kick them out, and a designated area where we cannot setup commercial beach equipment at all. Our sets are professionally put up anchored and secured with a traditional 15 lb concrete weight, they are high quality reinforced and insured. Every morning we clean and make the beach presentable for everyone. We are not required or responsible to do so however we assume this responsibility for using these areas.

Kamaaina are a large part of our regular customers base especially during the slower times, holidays and three day weekends. That's when they like to come down and enjoy without so many visitors. We have been around for so long we have quite a bit of local regular customers. Aloha Beach Services has become the spot to go to. We are very grateful!

Aloha Beach Services staff are trained to assist with water safety and first responders in any way we can. Aloha Beach Services helps protect first responders from heat exhaustion. We are exclusive with this response. No other beach service on Waikiki Beach does this! This can be

Commented [TM2]: Need to tied

easily proved by checking with ocean safety lifeguards at 2A and 2B and their lieutenants and captains. Even retired ones! Because they are the personnel we assist. These are the 2 towers that we are operating in close vicinity too. By grabbing our nearest umbrella to the response scene and shading them while they do CPR holding the umbrella above the first responders it keeps them from heat exertion and helps with crowd control! If you have ever experienced an active rescue and emergency lifesaving efforts you would know what I mean.

Sun Tan

Back the 50's 60's into the early 90's, getting a suntan was very popular activity to do. No one heard of skin cancer or ozone holes, all they were interested in was a sun tan from Hawaii that they got on Waikiki Beach. Average stays in Hawaii were a lot longer than it is now and it took longer to get the tan they wanted. It was the ultimate bragging right to have a sun tan from Waikiki Beach. There were suntan oil stands on most beachfront properties that specialized in tanning. I remember the Moana Surfrider Hotel had one stand on the private beach and another in their Diamond lawn area. The Royal Hawaiian Hotel had one located on the pool deck along with the Sheraton Waikiki. I'm not certain, but I recall Outrigger Hotel and the Outrigger Reef Hotel both had the same company also. They sold tanning packages (aka "tanning kits") from \$60.00 to over \$100.00. Today, you cannot find any tanning specialist on the beach anymore. You can get quality products from most retail stores anywhere now.

In recent years, people have become more susceptible to skin cancer due to the harmful UV rays and issues related to climate change. Sun block is now one of the top seller items in most of the retail stores along with umbrellas and beach chair sets.

Beach umbrellas are not a new thing on the beach. Especially on Waikiki. You look back to the original Waikiki Beach Boys of the 40's and 50's and the original Outrigger Canoe Club days they had them then. Who knows where the use of beach umbrella originated from. It could have been back then. Now the demand has gotten greater. The industry has gotten bigger than before. The health risks are greater. The population has grown.

The Waikiki Beach Boys of long ago is the reason why we are the world class resort destination. If not for them, we could have been an agricultural state. Not that it's a bad thing but think what would you be doing now if it wasn't for tourism. Where would you be living now? We wouldn't have as many people living here, the districts would be smaller and we would have nothing to grumble about. No need for tourist industry heads, hotel managers, hundreds of restaurants and shopping malls, etc...No need for homes on our mountains, beaches and in our valleys. Everyone would live close to where they work and factories they worked at. We had agriculture before and our own canneries, where have they gone and why. They're gone because it's cheaper to cultivate, process, and distribute them somewhere else. The Waikiki Beach Boys help to keep Waikiki Beach clean as much as they can. What everyone also forgets is it's probably the "GREENEST BUSINESS" in the state of Hawaii. That's what we want right? We don't use any type of fuel for our activities. The only thing we emit is "ALOHA" in more ways than one.

The Waikiki Beach Boys are a special breed of watermen, ambassadors and friends. We are entertainers for country leaders, dignitaries, and movie stars, millionaires and billionaires. But the people who the Waikiki Beach Boys take care of the most are the ones who need them the most. "EVERYBODY." Don't forget them. I would be happy to speak with anyone more about this to provide insight, history, and perspective. I thank the Chair Committee Senator Karl Rhoads and Committee on Judiciary again for your time.

Aloha Didi Robello. WAIKIKI BEACH BOY.

Douglas Meller
2615 Aaliamanu Place
Honolulu, Hawaii 96813
douglasmeller@gmail.com

Testimony Supporting SB 3377, SD1 Relating to Commercial Activities on Beaches

Submitted to House Committee on Water and Land
8:30 am, March 15, 2022, State Capitol Room 430 & Videoconference Hearing

REQUESTED AMENDMENTS OF SB 3377, SD1

I request that you amend SB 3377, SD1 to:

- apply to all beaches managed by the DLNR. (SB 3377, SD1 applies to a public easement over a publicly constructed privately owned part of Waikiki Beach between the Royal Hawaiian groin and Kuhio Beach Park. SB 3377, SD1 may not apply to any other beach under the DLNR's jurisdiction.)
- apply both prior to and after completion of rental contracts. (SB 3377, SD1 prohibits "... the setting up of beach equipment or watercraft by a commercial vendor without a reservation by a customer for immediate use...." SB 3377, SD1 may not prohibit multi-hour storage of commercial beach equipment or watercraft on beaches after completion of rental contracts.)
- authorize exemptions under DLNR rules. (SB 3377, SD1 would not authorize exemptions for storage of commercial outrigger canoes. This might make it infeasible for beach boys to offer canoe rides to tourists on Waikiki Beach.)
- authorize the DLNR to administratively impose civil fines of "not less than \$50 and not more than \$1,000 for each instance of violation". (Unless SB 3377, SD1 authorizes administrative civil fines, enforcement would require criminal prosecution under §200-14(a), Hawaii Revised Statutes. However, criminal prosecution has not worked. According to March 28, 2016, DLNR testimony opposing SCR 53 during the 2016 session,

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.

LEGISLATION IS NEEDED TO FACILITATE AND ENCOURAGE ENFORCEMENT

Legislation is needed to facilitate and encourage DLNR enforcement of a 1965 State beach widening agreement and State DLNR rules which prohibit commercial activity on a public easement over Waikiki Beach between the Royal Hawaiian groin and Kuhio Beach Park. Item 9 of the 1965 SurfRider-Royal Hawaiian Sector Agreement explicitly 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....

Although abutting private property owners promised not to allow commercial use of the public easement:

- Kiosks on abutting hotel property are used to intermittently rent hundreds of commercial beach chairs and umbrellas placed/stored every morning on the public beach easement.
- Every night the commercial beach chairs and umbrellas are removed from the public beach easement and stored on abutting hotel property.

The following 8:20 am January 17, 2022 picture shows the scale of routine, daily commercial activity on the public easement makai of the Royal Hawaiian.



Legislation also is needed to facilitate and encourage DLNR enforcement against unauthorized commercial activity on publicly owned beaches under DLNR jurisdiction. In many parts of the State, hotels (or their concessions) located next to State-owned beaches routinely place/store unrented commercial equipment on a public beach without DLNR authorization. Kiosks on hotel property are used to intermittently rent commercial beach chairs and umbrellas placed/stored every morning on public beaches. Every night the commercial beach equipment is removed from public beaches and stored on abutting hotel property.

The following 11 am October 16, 2021 picture illustrates the scale of routine, daily commercial activity by the Hale Koa beach concession on the public beach makai of Fort DeRussy. The DLNR has not authorized this commercial activity. Like most beaches in Hawaii, Ft. DeRussy Beach is State-owned “public lands” and is not a public easement over private property.



VOLUNTARY SELF-REGULATION BY SCOFFLAWS DOES NOT WORK

SR 27, SD 1 (2016) requested the DLNR to “submit a report on its progress regarding the resolution of conflicts under the 1965 SurfRider Royal Hawaiian Sector Beach Agreement, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2017 and Regular Session of 2018....” In December 2016,

following two years of consultation and negotiation with Waikiki hotels and their concessions, the DLNR submitted a report to the Legislature titled "Progress on the Resolution of Conflicts Under the 1965 SurfRider-Royal Hawaiian Sector Beach Agreement". This DLNR report alleged that Waikiki hotels and their beach concessions had agreed to self-regulate commercial activity on the public easement makai of the hotels. However, unregulated commercial activity resumed within a few months and the DLNR did not report this to the Legislature.

COMPLAINING TO THE BLNR DOES NOT WORK

For you information, and possibly your amusement, the remainder of this testimony consists of my July 28, 2021 email complaint to the BLNR. Enforcement obviously is a problem.

from: **Douglas Meller** <douglasmeller@gmail.com>
to: BLNR.testimony@hawaii.gov
cc: "Deborah L. Ward" <dlnr@hawaii.gov>
bcc: Chad Blair <cblair@civilbeat.com>, Sophie Cocke <scocke@staradvertiser.com>, Dolan Eversole <eversole@hawaii.edu>
date: Jul 28, 2021, 11:38 AM
subject: please forward this email to all members of the Board of Land and Natural Resources
mailed- gmail.com
by:

If you oppose unauthorized commercial use of Hawaii's beaches, please ask Suzanne Case to enforce a 1965 State beach widening agreement and State DLNR rules which prohibit placement/storage of unrented commercial beach chairs and umbrellas on a public easement over Waikiki Beach between the Royal Hawaiian groin and Kuhio Beach Park.

It has never been legal to place commercial beach chairs on the Waikiki public beach easement before they are rented. It has never been legal to store commercial beach chairs and umbrellas on the Waikiki public beach easement after completion of a rental contract. Self-regulation by commercial scofflaws does not work. The DLNR has not seriously tried to enforce commercial restrictions over the Waikiki public beach easement since Laura Thielen was the DLNR Director.

In spring 2021 the DLNR substantially widened the beach makai of the Royal Hawaiian, Outrigger Waikiki, and Moana Surfrider hotels. Look what happened next. I took the following pictures between 8 and 8:30 am on 7/21/21.























THE 1965 STATE BEACH WIDENING AGREEMENT

The 1965 SurfRider-Royal Hawaiian Sector Beach Agreement includes exhibits which designate a “Line A” and a “Line B” over the beach between the Royal Hawaiian groin and Kuhio Beach Park. “Line A” is mauka of “Line B”. The 1965 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 for public recreational use; and any beach constructed or accreted makai of “Line B” is publicly owned. All of the previous pictures show the public easement makai of “Line A”.

Under the 1965 Agreement, abutting property owners are allowed to install portable fences and signs to exclude the public from private property mauka of “Line A”. As shown in the two following 7/21/21 pictures, the Royal Hawaiian and Moana Surfrider Hotels have installed fences and signs to exclude the public from the beach mauka of “Line A”.





In exchange for allowing hotels to exclude the public from part of Waikiki Beach, Item 9 of the 1965 SurfRider-Royal Hawaiian Sector Agreement explicitly required 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....

Although abutting private property owners promised not to allow commercial use of the public easement:

- Every day kiosks on abutting hotel property are used to intermittently rent hundreds of commercial beach chairs and umbrellas placed/stored on the public beach easement.
- Every night the commercial beach chairs and umbrellas are removed from the public beach easement and stored on abutting hotel property.

DLNR RULES TO ENFORCE THE 1965 STATE BEACH WIDENING AGREEMENT

Several DLNR reports to the Legislature acknowledge that the following DLNR rules prohibit placement or storage of unrented commercial beach chairs and umbrellas on the public beach easement makai of the Royal Hawaiian, Outrigger Waikiki, and Moana Surfrider hotels.

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:

“Business” means all activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining an economic benefit either directly or indirectly. . . .

“Waikiki Beach” means any and all lands along the shores of the island of Oahu . . . 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. . . .

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

(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. . . .

§13-255-7 Penalties. Any person who is guilty of violating these rules shall be fined not more than \$10,000 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.

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**Testimonial in favor of SB 3377 SD1 AS WRITTEN,
Relating To Commercial Activities on the Beaches.**

Submitted to Senate Committee on Water & Land
8:30am, March 15, 2022 State Capitol via videoconference

I would like to thank Chair Tarnas, Vice Chair Branco, and Committee on Water & Land for hearing my testimony.

I support SB 3377 SD-1 as written.

I am **against proposals made in the testimony of Douglas Meller to amend SB 3377 SD1.**

Background.

I am a homeowner in Waikiki and a homeowner in California. I spend nearly half of the year in Honolulu and spend most of my time at Waikiki Beach. The availability of commercial umbrellas and chairs is an important part of enjoying Waikiki Beach. As a frequent visitor of Oahu, and resident of the Lake Tahoe area, I am aware of and sensitive to keeping public beach areas open for public use. However, commercial activity can enhance the public use of the same property for many beachgoers, as described below.

Statements in Support of SB 3377 SD-1 as written.

Because I surf, I do not want to carry chairs and umbrellas down to the beach. I already have a surfboard to carry. I prefer to rent chairs and umbrellas for several reasons:

1. The chairs and umbrellas are substantial and they do not blow away when a strong gust of wind hits the beach. I have seen on several occasions umbrellas and light beach chairs brought by beach goers fly into the water and hit people because they are extremely light weight.
2. The umbrellas are professionally anchored, preventing them from blowing away when a strong gust of wind hits the beach. Almost every day that I am on the beach when trade winds are blowing, I see non-commercial umbrellas uprooted and fly into the water or hit other people.
3. By renting the chairs and umbrellas for the entire day, my personal property is kept safe while I surf, go to breakfast, go to lunch, or shop. I am able to leave my belongings at the kiosk and someone watches my property, preventing them from being the target of thieves.

Statements in Opposition to Proposals to Amend SB 3377 SD-1 in Testimony of Douglas Meller

Mr. Meller proposes that all chairs and umbrellas be pulled from the beach when the rental period ends. This proposed amendment is too broad and creates an impractical situation at the beach.

When I arrive at the beach, if all umbrellas are rented and I wish to rent an umbrella set, often one might become available in a few minutes or within an hour. When the previous renter's time is over, rather than removing the umbrella and chairs, I can re-rent the set almost immediately and not have to wait for someone to install a new set. A blanket "remove when rental period is over" is an unnecessary draconian measure that fails to recognize the reality of how visitors and locals alike show up at the beach looking to rent umbrellas and chairs.

I noted that Mr. Meller supports this proposal with photographs of chairs/umbrellas with chair backs closed. It appears these photographs are presented to "show" that chairs/umbrellas remain on the beach when not rented, or after rental is completed. However, the conclusion reached by Mr. Meller is inaccurate. There are plenty of times that I (and other users of rented equipment) leave the beach for lunch, or even surf, and put the chair backs down as a deterrent to others using the rented equipment. Often, I will put my bag, including my towel, at the kiosk to make sure my property is safe. An empty chair is not evidence that the chair remains unrented.