



PO Box 1097, Kihei, HI 96753

The Office of the Ombudsman
State of Hawaii
complaints@ombudsman.hawaii.gov
Attn. Ms. Megan Ito-Shigetomi

March 27, 2022

Dear Ms. Ito-Shietomi,

Complaint re. Illegal Early 4PM Saturday Closure of Little Beach by DNLR

In order for our complaint to be clearly understood we must first provide information about the parties, their culture and history.

The Parties

1st Party: Primary stakeholders, at the beach at varying times from dawn to sunset, 7 days per week, for the purpose of beach recreation, the same as Big Beach (e.g. reading book, sunbathing, playing in the waves, ocean watching, talking). The group includes a large proportion of business owners, professionals and retirees of relatively high net worth, and local families and a few surfers. Average age older than on the average beach. Many have been using Little Beach for 20 - 50 years and longer. The kindness and aloha of the Little Beach community has been echoed around the world resulting in it becoming nationally and internationally acclaimed. Little Beach is a significant contributor to Maui's economy with many of its visitors patronizing the Wailea resorts.

2nd Party: Drum Circle gathering, at the beach for 3 hours on Sunday evenings (never on Saturday) for beach recreation, live music, dancing (some), new age spiritual practices, hula-hoopers, fire-dancers. The arrival of the 2nd Party ends the normal tranquility and causes the gradual departure of most of the 1st Party, however this is a valuable Maui cultural and social gathering with good natured and joyful people, and just the occasional bad apple. Average age younger than on the average beach. Many Maui residents take their visitors to the Drum Circle gathering for its novelty, and there is never any concern about safety or welfare.

This was a 30 year tradition at Little Beach until January 2021 when they were displaced to Po'olenalena Beach Park by the DLNR.

In this complaint, Friends of Little Beach does not advocate for the 2nd Party because it is irrelevant to Early Saturday Closure.

3rd Party: The Caretaker, the DLNR, was given responsibility for the Hawaii State Parks by the legislature, defining its duties and purpose in [HRS §184-6](#) with the purpose stated: **"for the use and enjoyment of the public."** The DLNR management does not have an attitude of public service, only self service - whatever is easiest with no concern for fairness and justice. They have the nature of a bully and act with absolute power, no regard for law, and with malice.

They ignore emails and phone messages from the public and demonstrate disdain for the public in press releases.

The History Leading to Early Saturday Closure

From time to time over decades, the DLNR police raided the Sunday Drum Circle gathering to enforce petty misdemeanor Park Rules, but actually issued very few citations. This had last happened on Sunday Nov 22 2020. The DLNR management like to issue press releases denigrating the 2nd Party - grandstanding on enforcement because that's about all the DLNR does at Makena.

On New Year Sunday January 3 2021, without anyone's intention, the 2nd Party crowd size was a multiple of the norm. For a small proportion of the attendees, the party spirit prevailed over COVID-19 Emergency Rules which was irresponsible and deplorable. The DLNR police were not there to enforce Rules. The DLNR management found a video of close proximity dancing on social media.

On Monday January 4, the 1st Party returned to the Little Beach and cleaned up the litter left by the 2nd Party, as they have on every Monday morning for decades. The DLNR has never cleaned up the beach.

On Tuesday January 5th the DLNR closed an uncrowded Little Beach when only the Covid rule-respecting 1st Party would be there in a state of serenity and aloha. The DLNR management knew the overcrowding was only for 3 hours at a New Year Sunday Drum Circle gathering with only minutes of very close proximity dancing. They knew it was not typical of regular Sunday evening Drum Circle gatherings. They knew that the regular Drum Circle gatherings are not at all typical of Little Beach at any other time. They knew there was no ongoing risk to public safety - yet they illegally installed the gate and illegally kept Little Beach closed for over 9 weeks.

In the DLNR [closure announcement](#), DLNR Chair, Suzanne Case stated that the closure was "*for everyone's health and safety,*" a falsehood since the only time of a surmised possible slight risk was for 3 hours on subsequent Sunday evenings. That must be compared to the much greater 7 day per week risk to beach goers pushed from Little Beach to Big Beach, rated the most dangerous beach in the State, from which the DLNR had removed its lifeguards. There was no legitimate safety gain and therefore the closure was illegal and an abuse of power.

Suzanne Case also stated "*Participants in the Sunday gatherings shoulder full responsibility for this closure. It's too bad their astounding lack of personal responsibility, penalizes everyone else who abides by the rules.*" First, Suzanne Case confirms that everyone else abides by the rules. Second, she states that everyone who abides by the rules will be penalized. Third, she falsely states that it is others, not the DLNR, that is penalizing everyone who abides by the rules.

This is DLNR vindictiveness and immorality on full view. What other government agency would seek to punish the uninvolved. For the DLNR to take punitive action against the uninvolved, and the vast majority of Little Beach users who were not even present, is unjust and immoral. This was government abuse of power. Little Beach is a very specific national and international visitor destination and hundreds, maybe thousands, of vacations were ruined. It shows no aloha to lock out visitors who have traveled thousands of miles.

Little Beach was reopened on March 13 2021. Since then, all of the 1st Party folk (1,000s) have been appalled at the residual changes imposed by the DLNR on those who were uninvolved. One of those residual changes is "Early Saturday Closure."

The Complaint

1. At no time since the January 5 2021 closure has there been a lawful justification for Early Saturday Closure of Little Beach.
2. Early Saturday Closure is an extension of the illegal 9 week closure that followed the DLNR [closure announcement](#). This announcement references only the Drum Circle gathering and repeats "Sunday" 6 times. There are no references to "Saturday." There has never been a Drum Circle Gathering on Saturday. The purported justification was an already past breach of Covid-19 Emergency Rules by the Drum Circle gathering.
3. At Little Beach, Saturday has identical circumstances to Friday which has 7PM closure.
4. The DLNR's March 3 2022 letter to OIP had an attachment of the DLNR Feb 28 email to Ombudsman. In that, the Subject heading states "Saturday" and the DLNR claimed it provided justification for Early Saturday Closure. It provided none. It provided information on isolated incidents concerning the Drum Circle along with an alleged danger to the public which is all about Sunday evenings and unrelated to Saturday. It was a smoke screen.
5. Also related to Sunday, the email has references to the operating difficulties and costs of law enforcement. That's the DLNR's problem, that cannot be resolved by resorting to illegal abuse of power.
6. The email references a since-cancelled Covid-19 rule, limiting gatherings without social distancing to 25 persons. The DLNR can try to spin it that everyone on the same beach constitutes a single gathering - but that is nonsense. For certain, there have never been any large gatherings on Little Beach on a Saturday.
7. The same email states the DLNR's legal authority (written by the DLNR):
§13-146-4 Closing of areas. (a) The board or its authorized representative may establish a reasonable schedule of visiting hours for all or portions of the premises and close or restrict the public use of all or any portion thereof, when necessary for the protection of the area or the safety and welfare of persons or property, by the posting of appropriate

signs indicating the extent and scope of closure. All persons shall observe and abide by the officially posted signs designating closed areas and visiting hours.

8. §13-146-4 makes it very clear that the ONLY conditions for "closing of areas" or "schedule of visiting hours" is "when necessary for the protection of the area or the safety and welfare of persons or property." It is illegal for the DLNR management to restrict hours for their own convenience or to reduce work load, reduce overtime pay, eliminate police performing duties in the dark (like they do everywhere), or for their personal rage, vindictiveness and prejudices.
9. §13-146-4 proves that Early Saturday Closure is illegal because there are no circumstances that meet the criteria "when necessary for the protection of the area or the safety and welfare of persons or property." Saturday has the same circumstances as Friday - which is 1st Party beach recreation only. This is abuse of power.
10. Early Saturday Closure pushes users of beach recreation from Little Beach to Big Beach, the most dangerous beach in the State for spinal injuries just at a time when the lifeguards are packing away their gear ready for a 4:30PM departure. Big Beach is much more dangerous than Little Beach in the period 4PM to 7PM. This shows the DLNR management's true disregard for "the safety and welfare of persons." It should also be noted that until recently, the DLNR had the lifeguards removed from Big Beach for 18 months with no regard for "the safety and welfare of persons." Enroute to Little Beach during that 18 months, we have passed people with broken backs and legs and their families in anguish. It takes a minimum of 30 minutes for a first responder to reach Big Beach.
11. §13-146-4 also proves that the method of Early Saturday Closure is also illegal because the permitted action is "by the posting of appropriate signs indicating the extent and scope of closure." §13-146-4 does not permit obstruction of the Registered Lateral Shoreline Access Corridor by installation of an illegal gate. This is abuse of power.
12. From the DLNR Office of Conservation and Coastal Lands:
"Shoreline public access is an important common law right that is shared by local residents and visitors alike." "OCCL is the lead agency with authority for maintaining public access along Hawaii's shorelines." "Legislative statutes governing access can be found in Hawai'i Revised Statutes HRS §115, ..."
13. The DLNR management, fully conscious of State Law has, with deliberation and malice, installed the gate and kept it in place for 15 months - a clearly specified illegal act:
[HRS §115-9](#) *Obstructing access to public property; penalty.*
(a) A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing: (3) A public transit corridor; or (4) A beach transit corridor; and thereby obstructs access to and along the sea, the shoreline, or any inland public

recreational area.

(b) Physical impediments that may prevent traversing include but are not limited to the following: (1) **Gates**;

(d) Minimum fines for violation under this section shall be as follows: (1) \$1,000 for a second conviction; and (2) \$2,000 for any conviction after a second conviction.

(e) As used in this section: **"Person" means** a natural person or **a legal entity**.

14. The open Gate reduces the access width from 9 ft to 3 ft which is also an illegal act:

[HRS §115-5](#) Beach transit corridor defined. (a) The right of transit shall exist seaward of the shoreline and this area shall be defined as a beach transit corridor. For purposes of this section, "shoreline" shall have the same meaning as in section 205A-1.

However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline below the private property lines, the counties by condemnation may establish along the makai boundaries of the property lines public transit corridors which **shall be not less than six feet wide**.

15. Maui County is required to maintain the legal registry of Shoreline Access Corridors aka Public Transit Corridors or Beach Transit Corridors. Ref:

[Maui County Shoreline Access Inventory Update.pdf](#)

Refer to pages 11 and 12.

Makena State Park Shoreline Access Corridor ID #s are 6,7,8,9:

ID # 6 (vertical) is Big Beach (via South Parking Lot) - alternative name Oneloa.

ID # 7 (vertical) is Big Beach (via South Parking Lot) - alternative name Oneloa.

ID # 8 (lateral) is Mo'oiki Beach - alternative name Little Beach

ID # 9 (vertical) is Black Sand Beach - alternative name Oneuli.

Note: Little Beach is named Mo'oiki by Maui County because it is in the Mo'oiki District, Pu'u Ola'i by the DLNR because it is adjacent to the Pu'u Ola'i cinder cones, and Little Beach by the rest of the world.

Required Corrective Action Under Law

1. Cease illegal early 4PM Saturday closure.
2. Update Park hours signage.
3. Remove the illegal gate.

Sincerely,



Bill Watts

Director and Secretary

Friends of Little Beach

Friends of Little Beach is a 501(c)(3) non-profit corporation formed to protect Little Beach, Maui, an internationally recognized Top 10 Naturist destination. Worldwide there are tens of thousands of naturists that love and revere Little Beach. On our website we report the DLNR's abuse of power directed at the Little Beach Community. <https://www.littlebeachmaui.org>