

GOVERNMENT OF FIJI

REGULATION OF SURFING AREAS DECREE 2010
(DECREE No. 35 OF 2010)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree -

PART 1 – PRELIMINARY

Short title and commencement

1. - (1) This Decree may be cited as the Regulation of Surfing Areas Decree 2010.
- (2) This Decree comes into force on the date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Decree, unless the context otherwise requires -

"Chief Registrar" means the chief registrar of the High Court of Fiji;

"Director of Lands" means the person holding all State Lands on behalf of the State under section 4(1) of the State Lands Act [Cap. 132];

"instrument of title" has the meaning as defined in the Land Transfer Act [Cap. 131], and includes any agreement to lease, or any lease or any licence or special licence issued by the Director of Lands or the Native Land Trust Board;

"Minister" means the Minister responsible for Tourism;

"NLTB" means the Native Land Trust Board and shall have the same meaning as in the Native Land Trust Act [Cap. 134];

"person" or "persons" shall include any company or association or body of persons, corporate or unincorporated;

"Registrar of Titles" or "Registrar" means the Registrar as defined in section 2 of the Land Transfer Act [Cap. 131];

"State" means the Republic of Fiji, and includes any official, Minister or employee of the State;

"surfing area" means those reefs or other foreshore or offshore areas in Fiji, together with any surrounding areas, which are used or utilised for surfing or any water sport.

Object of the Decree

3. - (1) The objects of this Decree are -
 - (a) to promote Fiji as a premier surf travel destination;
 - (b) to liberalise access to any surfing area in Fiji for the purposes of tourism and recreation;

(c) to enable unrestricted access to any surfing area by all persons, including tourists, hotels and businesses engaged in providing and promoting surfing or any water sport; and

(d) to give effect to such other matters, as provided in this Decree.

(2) The Decree achieves these objects by -

(a) providing for the cancellation of any lease, licence or any other instrument of title in relation to any surfing areas;

(b) providing for any interest in any surfing area to be absolutely vested in the Director of Lands for and on behalf of the State; and

(c) allowing for unrestricted access and use of any surfing area by any person.

PART 2 - VESTING OF INTEREST IN SURFING AREAS

Vesting of interest do any surfing area

4. - (1) Notwithstanding any claim by any person under any instrument of title, lease or licence, the interest in and ownership of any surfing area shall immediately upon the commencement of this Decree, wholly and absolutely vest in the Director of Lands for and on behalf of the State, without any compensation being payable to any person.

(2) The absolute vesting of all interest in any surfing area in the Director of Lands under subsection (1) shall, upon the commencement of this Decree, override and nullify any other interest in any surfing area existing in any other person or body by virtue of any written law, and to the extent of any inconsistency with this Decree and any other written law, this Decree shall prevail.

Cancellation of any existing interest to any surfing area

5. - (1) Any instrument of title, including any lease or licence issued by the Director of Lands or the NLTB, prior to the commencement of this Decree, in relation to any surfing area, shall, immediately upon the commencement of this Decree, be deemed to have been cancelled, without any compensation being payable to any person.

(2) The cancellation of any instrument of title by virtue of subsection (1) shall, immediately upon the commencement of this Decree, be notified by the Director of Lands or the NLTB, as the case may be, by way of a written notice issued to any person having any interest prior to the commencement of this Decree in any surfing area.

(3) The cancellation of any instrument of title under subsection (1) shall be effected by the Director of Lands or the NLTB, as the case may be, in their respective records, and the Registrar of Titles shall make such entries to give effect to the above provisions or as may be directed by the Minister.

(4) Nothing in the State Acquisition of Lands Act [Cap. 135], State Lands Act [Cap. 132], Land Sales Act [Cap. 137], Land Transfer Act [Cap. 131], Native Lands Act [Cap. 133], Native Land Trust Act [Cap. 134], or any other written law shall invalidate or affect the vesting of absolute interest in any surfing area in the Director of Lands and the cancellation of any instrument of title issued or existing prior to the commencement of this Decree.

(5) No further consent, permit, certification, ratification, fees or charges, registration fees of any kind, filing fees, lodgement fees, stamp duties or fees of any kind whatsoever shall be required to be given or

paid in respect of any document or instrument sought to be registered for the purpose of evidencing, recording or effecting the matters referred to in subsections (1) and (2) notwithstanding any provision to the contrary in any written law.

(6) The vesting of absolute interest in any surfing area in the Director of Lands, and the cancellation of any interest in any surfing area existing prior to the commencement of this Decree, by virtue of this Decree, shall be valid and effective notwithstanding any non-compliance with any written law.

PART 3 - USE OF SURFING AREAS

Use of surfing areas

6. - (1) Any person may, whether individually or in a group, access and use any surfing area for the purposes surfing or any water sport, without obtaining any permit or approval from any person and without the payment of any monies or any compensation to any person, for the use of any such surfing area.

(2) Any person who -

(a) obstructs or prevents any person from accessing or using any surfing area for the purposes of surfing or any water sport;

(b) attempts to obstruct or prevent any person from accessing or using any surfing area for the purposes surfing or any water sport; or

(c) solicits a person to obstruct or prevent or to attempt to obstruct or prevent any person from accessing or using any surfing area for the purposes of surfing or any water sport,

shall be guilty of an offence and shall be liable on conviction,

(i) in the case of a body corporate, to a fine not exceeding \$10,000; or

(ii) in the case of a natural person, to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 2 years, or both.

Conditions for use of any surfing area

7. The following conditions shall apply to all persons who are entitled to access and use any surfing area under section 6 of this Decree -

(a) The person shall not carry out any other activity, including any fishing, at any surfing area, other than surfing or engaging in any water sport;

(b) The person shall not engage in any activity which may cause damage or destruction to the surfing area, any reef, lagoon, any form of marine life or any surrounding areas;

(c) The person shall keep the surfing area clean and free of any debris, pollution or contamination;

(d) The person shall, at all times, ensure the safety of all persons engaged in surfing or in any water sport at any surfing area;

(e) The person shall not, in any way, interfere, obstruct or prevent any person from accessing or using any surfing area;

(f) The person shall at all times comply with such other written laws as may be applicable to any surfing area; and

(g) The person shall comply with all directions issued by the Minister under this Decree.

Minister may give directions

8. The Minister may, by notice published or broadcast in any local print or broadcast media, specify other conditions in relation to the access or use of any surfing area for surfing or any water sport, and may give such directions as are necessary to give effect to the objects and other sections of this Decree.

Offences

9. - (1) Any person who infringes any of the conditions specified under section 7 of this Decree, or any conditions or directions issued by the Minister under section 8 of this Decree, shall be guilty of an offence and shall be liable on conviction,

(a) in the case of a body corporate, to a fine not exceeding \$10,000; or

(b) in the case of a natural person, to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 2 years, or both.

Exclusive use of surfing areas prohibited

10. No person shall, at any time whatsoever, be entitled to exclusive use of any surfing area.

Minister may prohibit surfing in any particular surfing area

11. The Minister may, by written notice, prohibit access to and the use of any surfing area for such periods as the minister may deem fit.

PART 5 - MISCELLANEOUS

Certain decisions not to be challenged

12. - (1) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body which seeks or purports to challenge or question:

(a) the validity, legality or propriety of this Decree;

(b) the validity, legality or propriety of the cancellation of any leases, licences or other instruments of title in relation to any surfing area and the vesting of interest in any surfing area in the Director of Lands; or

(c) any decision of any Minister or any State official or body, made under this Decree.

(2) Any proceeding, claim, challenge or dispute of any nature whatsoever in any court, tribunal, commission or before any other person or body exercising a judicial function, in respect of any of the subject matters in subsection (1) that had been instituted before the commencement date of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall be wholly vacated and a certificate to that effect shall be issued by the Chief Registrar.

(3) Where any proceeding, claim, challenge, application or dispute of any form whatsoever, is brought before any court, tribunal, commission or any other adjudicating body, in respect of any of the subject

matters in subsection (1), then the presiding judicial officer, without hearing or in any way determining the proceeding or the application, shall immediately transfer the proceeding or the application to the Chief Registrar for termination of the proceeding or the application and the issuance of a Certificate under subsection (2).

(4) A certificate under subsection (2) is, for the purposes of any proceedings in a court, tribunal, commission or any other person or body exercising a judicial function, conclusive of the matters stated in the certificate.

(5) A decision of the Chief Registrar to issue a certificate under subsection (2) is not subject to challenge in any court, tribunal, commission or any other adjudicating body.

Minister may make regulations

13. The Minister may make regulations to give effect to the provisions of this Decree.

GIVEN under my hand this 1st day of July 2010

EPELI NAILATIKAU
President of the Republic of Fiji
