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Testimony Revised March 12, 2014

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Dear Director Robinson,

My name is Alan Lennard.

I am the contest director (of record on DPR permits) for the Pipeline Bodysurfing Classic from 1987 to 2008; I additionally ran the event on the world bodyboarding championships permit 3 times (since our event was denied permits 5 times in the last 6 years).

Currently and Previously (2011-2012 season, 2012-2013 season) the city DPR has denied permits to ALL Bodysurfing events on North Shore calendar (with the exception of a token event at Waimea bay).

It has been brought to my attention that this permit denial applies to Section 1983 of Title 42 of the U.S. as a violation of "Equal Protection". Therefore the city may have become exposed to a civil action regarding deprivation of rights to the class of ocean sports enthusiasts entitled to permit access. Therefore, the current conflict resolution process obviously must be completely overhauled in order to prevent this kind of exposure.

As it stands now, the CURRENT proposed draft rules put forth and propose to FORMALLY Ratify the poorly designed and implemented Conflict Resolution Process that ALL North shore surf event applicants have endured since 1999. This is when they were created by Judge Sabrina Mckenna's Mandate during the lawsuit: HUI O HE'E NALU ETAL VS C & C OF HONOLULU ETC; Civil# 1CC99-0-003308 Circuit Court First Circuit; R. Ishikawa & D. Spurlin.

The CURRENT proposed draft rules DO NOT address any of the important issues regarding Surf Contest permitting problems, as displayed by BOTH the FLAWED Outcome for 2011 to 2012 and 2012 to 2013 calendars, in which NO Bodysurfing competitions received permits (with the exception of a 1 day Waimea Bay event).

This process needs to be revisited BEFORE THE CITY PROCEEDS IN REVISION OF THE EXISTING RULES.

On October 24, 2012, I was able to briefly meet with previous Director Gary Cabato and his Assistant William Balfour. At the meeting, I was able to illustrate how one of the intrinsic flaws of the judicially mandated conflict resolution process was impossible to assess and assign a numerical value related to diversity of event.

Ironically, when I reviewed the CURRENT proposed draft rules (on or about April 18, 2013), the entire provision of EVENT DIVERSITY has been omitted, which in effect makes the rules no longer able prevent being completely dominated by a single watersport discipline. The EVENT DIVERSITY Provision MUST Be RE-INTRODUCED into the Next version of Draft rules.

The City did incorporate a token version of one of our recommendations as a 1 week meeting period with DPR to attempt to mitigate conflicts.

However, an adequate window of 30 days (at the bare minimum 21 days) to be used for Mediation is

ABSOLUTELY necessary to resolve conflicts. Seven (7) days is NOT adequate to organize a meeting with ALL conflicting contest directors.

The city DPR should RE-WRITE ANOTHER SET OF Proposed Rules and have public hearings again to take testimony.

HERE are some specific concerns about the CURRENT PROPOSED rules include the following:

1A) Re-Introduce EVENT DIVERSITY Provision into the Next version of Draft rules.

1B) Proposed rules continue to create a vulnerability of ASP (Association of Surfing Professionals) dominance over ENTIRE North Shore Surf event calendar; Conflict resolution process is highly flawed. City Employees who judge process do not understand criteria.

Example – Diversity: Is the diversity being measured a form of internal or external diversity? (Internal diversity would be measuring the design of the event such as having many different age groups, both genders etc.) (External diversity would be measuring the ENTIRE calendar of events).

The city employees who have been queried about this interpretation are NON-responsive and the city RFA (request for application) document currently given to the applicant is AMBIGUOUS at best.

FINALLY, to Measure whether an event would be EXTERNALLY DIVERSE would necessitate knowing the entire calendar applicants with the exception of the conflicttees and then determining which conflicttee will increase the diversity of the calendar.

That is NOT possible using the City DPR Conflict resolution Process. Ironically, the city weights the value of Diversity so low in its point scale, it is almost a foregone conclusion that diversity is more of an UNIMPORTANT or token aspect of the criteria and plays NO significant aspect of the City DPR Conflict Resolution Process at all!

2A) The current City DPR Conflict Resolution process which has NEVER been addressed in the rules previously and which was done by mediation prior to 1999 lawsuit will now have formalized, ratified description with all of it's embedded flaws and difficulties. Once this flawed process is part of the rules, it will be more difficult for future administrations to fix inherent problems. This will increase the DPR unwillingness to FORMALLY allow mediation to resolve scheduling conflicts.

2B) Described in the CURRENT PROPOSED RULES Section §19-4-10 b(2) is a meeting to act as mediation described as follows:

During the first week of the permit application review period, the windward district recreation director IV shall notify all parties involved in a conflict of event dates to meet with the ocean recreation specialist assigned to Haleiwa Alii Beach park no later than the second week of the application period.

However, the process MUST include bordering applicants to the conflicting applicants and realistically, SHOULD INCLUDE all the applicants in order to fix the schedule by accommodating the conflict. Therefore, the logic of bringing ONLY the conflicting applicants will likely NOT solve the conflict using a facilitation/mediation model.

2C) Conflict Resolution process should allow for mediation AFTER Submissions are received by city and BEFORE DEADLINE for NSNB/SBCA to make comments (the deadline period should be expanded to allow for mediation to be effectively conducted by mediator and submit results to City).

City DPR should provide accurate records of all applicants so that mediation can be effectively performed by NEUTRAL mediation (MEDIATION TOOLS should be included in submission as a mediation fact sheet describing applicants scheduling priorities:

1st, 2nd, 3rd priority in 3 categories:
category 1: calendar weeks;

category 2: amount of competition days;
category 3: amount of holding period days.

3) Financial requirements for rules will impact small events. Most events DO NOT receive sponsorship commitments UNTIL AFTER THEY ARE AWARDED PERMITS. ref: §19-4-5(c)A statement of financial commitment from the organizers and/or sponsors for the full amount of the monetary prizes shall be submitted with the application for all events offering monetary prizes.

4) Financial requirements for rules will impact small events –MOST events are not capable of budgeting for advance and follow-up accounting to supply city with unnecessary accounting work product - Reference: §19-4-6 (1) Permittee shall submit a financial statement to the department within twenty business days after completion of the shore water event.

5) The city DPR is describing an illegal variance for the Eddie Aikau Big wave event (the event is a 1 day event which ONLY happens if Waimea Bay is over 20 feet); however, city DPR refuses to allow permit applications during that 90 day window at Waimea Bay for smaller conditions events and this appears to be an abuse of the immense discretion by the City DPR and actually creates an Event Access “Monopoly” at Waimea bay:

Ref §19-4-9(j) Scheduling of overlapping waiting periods is prohibited; provided, however, the director may approve a big event to have a waiting period of up to a maximum of ninety days which may overlap the waiting periods of other surf events.

The rules allow up to 16 days at Waimea bay, however this monopoly prevents most other events from utilizing competition time there.

ADDITIONALLY, Please find Additional comments attached to the Draft Language from the CURRENT Proposed Rules. The comments are underlined.

I appreciate your willingness to assess the rules revision process and to make the extra effort to improve the outcome by allowing more input and comments.

Thank You



Alan Lennard

ADDITIONAL COMMENTS (Page 2)

"Big wave event" means a surf event requiring participants to paddle into waves of minimum wave face heights of forty feet or higher without the use of thrill craft or tow-in assistance. (Is this face or back scale? Bodysurfing & Bodyboarding have different criteria for "Big wave standard")

"Criteria rating sheet" means the rating form used in resolving north shore calendar conflicts. (Why not create a sheet to assist ACTUAL mediation ?)

"Nonprofit organization" means an association, corporation or other entity, organized and operated exclusively for religious charitable, scientific, literary cultural educational, recreational, or other nonprofit purposes no part of the assets, income or earnings of which inures to the benefit of any exclusively individual or member thereof and whose charter or other enabling act contains a provision that, in the event of dissolution the assets owned by such association, corporation or other entity shall be distributed to another association, corporation or other entity organized and operated to association, corporation or other entity organized and operated exclusively for nonprofit purposes, and which further qualifies for exemption from the general excise tax provisions of Chapter 237, Hawaii Revised Statutes, as amended and/or under Section 501 of the Internal Revenue Code of 1954, as amended.

"Pro-Am shore water event" means a shore water surf event that includes separate divisions for amateurs and professional participants or allows entries from BOTH amateur and professional entrants.

(n) Permittee shall submit a financial statement to the department together with a treasurer's detailed financial report (Profit and Loss Statement and Balance Sheet) no later than sixty business days after the completion of the shore water event. Why is this necessary ? (C&C DPR = SURF CONTEST IRS CID ?)

(i) Scheduling of overlapping waiting periods is prohibited; provided however, the director may approve a big wave event to have a waiting period of up to a maximum of ninety days which may overlap the waiting periods of other surf events (Why Only the "big wave event" is allowed an umbrella & overlapping waiting period?)

(2) During the first week of the permit application review period, the Department shall provide all applicants with a list of the applicants, requested dates, locations, APPLICANT PRIORITIES AND NOTING SCHEDULING CONFLICTS. At their own expense, the applicants will have (21 DAYS OR MORE AFTER RECEIPT OF THE CONFLICT LIST) to review the applications, determine conflicts, mediate solutions to the conflicts and submit an amended application, if desired. All amended applications for use of park facilities submitted by August 15, will nullify the applicant's original application.

(3) ON OR AFTER 21 DAYS if there are any remaining conflicts the department shall immediately proceed to conflict resolution and determination of all permits during the application period.
(c) For the conflict resolution process, each panel member shall complete a conflict resolution criteria rating sheet for each application in conflict and score each application in conflict using the following criteria:

(1) Regulatory compliance (Maximum 27 points) -Whether the event comprised of the same gender categories, classification levels, and activity, held in the year before the north shore calendar complied with the following permit conditions:

(A) Park rules (3 points) Compliance with all park rules. (THIS DOESN'T MAKE SENSE, What if the applicant didn't receive permit previous year ?)

(3) Competition level diversity of event (THIS DOES NOT MAKE SENSE; is this INTERNAL or EXTERNAL Diversity ?)

Maximum 15 points

(A) Amateur (15 points)

(B) Pro-amateur (10 points) (C) Professional (5 points)

(4) Participation index (Maximum 15 points)

The participation index is calculated by dividing the number of projected participants by the number of competition days requested.

Less than 15 per competition day (0 points)

ADDITIONAL COMMENTS (Page 3)

- More than 15 but less than 25 (5 points)
More than 25 but less than 40 (10 points)
More than 40 participants (15 points)
- (5) Current Application Requirements (Maximum 10 points)
- (6) Community Service (Maximum 40 Points)
- (A) Community Service (Maximum 20 Points) The applicant provided one or more of the following services to the north shore community in the past year. (5 points each)
- (i) Beach Cleanup
(ii) Conducted Workshops (iii) Conducted clinics
(How do you quantify sweat equity?)
(iv) Sponsored or organized a community event
- (B) Donations (Maximum 9 Points)
Provide monetary or equipment donations for the benefit of north shore community nonprofit organizations. Provide financial statements or other evidence (How do you quantify sweat equity?) documenting the donations shall be submitted at the same time of the application. Points assessed to be based upon a cumulative donation total:
- (i) \$100 to \$250(5 Points)
(ii) \$251 to \$500(6 points)
(iii)\$501 to \$800 (7 points) (iv) \$801 to \$1000 (8 points) (v) \$1001 and over (9 points)
- (f) After the draft north shore calendar has been completed, the department shall review the draft calendar to determine whether the draft calendar includes a minimum of one bodysurfing event. The (WHY, Create this arbitrary and UNFAIR Mechanism for allotting a bodysurfing event access to the North Shore Calendar?)
- (g) Only in the event the draft calendar does not include a bodysurfing event, the department shall make available the date and park site last scheduled on the draft calendar to the applicant requesting a permit for a bodysurfing event. If the applicant requesting a permit for the bodysurfing event accepts the proposed date and park site, the applicant shall replace the application that was tentatively scheduled on the draft calendar. In the event there are two or more applications requesting permits for bodysurfing events, the department shall conduct a separate lottery amongst the applicants. The name of each applicant shall be placed in a drawing box and the director shall conduct the drawing of the name of the applicant who will be first offered the date and park site last scheduled on the calendar. In the event the applicant does not accept the proposed date and park site will be offered to next applicant whose name is drawn and so forth until the date and park site is accepted by one of the remaining bodysurfing applicants. If no applicant accepts the date and park site, the original application that tentatively scheduled on the draft calendar will be awarded the permit for the date and park site. (WHY, Create this arbitrary and UNFAIR Mechanism for allotting a bodysurfing event access to the North Shore Calendar?)