TESTIMONY
HB 3177 HD1
LATE

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Senate Committee on Water and Land

Sen. Clayton Hee, Chair
Sen. Kokubun, vice Chair

Hearing: Wednesday March 12, 2008 at 2:45 pm in rm 414

Re: Testimony in Support of HB 3177 [redacted]

The effort this year to correct the problem of unauthorized commercialism on Hawaii's public beaches, while much needed, seems to me to be redundant. State land use law already prohibits most of the problems legislators are attempting mitigate with new legislation. My concern with this package is it fails to speak directly to the Waikiki grandfather situation. Increasing civil penalties for land use violations without addressing the Waikiki grandfather situation, is problematic. failing to address this situation could further entrench DLNR in what has long been a policy of preferential treatment for certain shoreline hotels. As you know a number of these hotels are being allowed to use up all the public beach space with commercial equipment without being subject to environmental or procurement law as is normally required when public lands are involved. In the summer of 2006 Peter Young actually told the Kailua Neighborhood Board that the Waikiki commercial policy, he described as a "monopoly," should be applied across the board to all areas under DLNR. He made reference to the CSV study on holding capacity and needing clear guidelines to mitigate user conflicts in high profile areas that are considered to be strained by over-use. Thus, in trying to explain the proliferation of surf and kayak tours, and why certain types are permissable while others are prohbited, Peter Young told the Kailua Board that a company at the Hilton has been operating a surf school business on public property (Dukes beach) in a "creative" way that gets around the permit requirements. He tried to say that this particular company was not technically illegal because "they do not use signage." This while C&K was paying the state $1,800 a month for exclusive use of Dukes beach. In fact the company Peter referred to not only had been using signage but was later cited for illegal land use along with the Hilton (WBA), and C&K who was allowed to return to the area the very next day; they are still without permits! See attachments for short summary on the Hilton beach permit.

Grandfather-history

When DLNR took the helm from DOT in the mid Seventies they immediately grandfathered certain shoreline hotels exempting them from state procurement requirements, not to mention the commercial prohibitions stipulated in the 1928 Waikiki Agreement (which resulted in a 75 foot set back requirement). Just prior to DLNR taking over from DOT, the public Lands Commissioner had ordered the shoreline hotels "back to their properties!" The Land Commissioner had informed the hotels in writing that the1928 law prohibiting "commercialism of any kind in or

on Waikiki beach" was still applicable, that they where in fact in violation of the prohibitions stipulated in that document. The DOT then issued an injunction prohibiting shoreline hotels from encroaching (commercially) into the "public sector of the beach." When this is pointed out to DLNR officials they almost always refer to loop holes in the law to excuse the problem. That's not technically land use they say because "no permanent structures are being placed on a public beach" etc. Besides they say many other comparable violations are occurring across the state, which are otherwise considered "violations under the law." It's important to point out here that the City and County has an effective system of preventing commercial abuse. The County issues a revokable trasit permit that is simple and effective both as a deterrent to over-use and as a way of protecting Hawaii's natural resources. This system is not perfect but its effective in that it can and does correct problems related to the permit, unlike DLNR, who continues to see all the citations they issue thrown out of court. Closely related to the problem of closing off shoreline or beach access is the issue of commercial abuse of public parking stalls. Commercial vehicles for example are almost always forced to compete with the public for parking stalls at public facilities where parking is limited. In most cases the commercial companies in question are issued blue cards from DLNR which are not revocable I'm told. This is the opposite approach than that of the City and County who will revoke a transit permit upon discovery of a violation. HB 3177 and HB 3178 while seemingly aimed directly at the problem falls short of addressing the loop holes that are responsible for creating what legislators are calling a twenty year old problem. The Coast Guard by the way has recently indicated that DLNR cannot issue ORMA cards that designate certain public beaches or oceans for private commercial use.

Confusion created over the definition of "land use."

"Land use" according to DLNR deputy Russell Tsuji, means erecting or placing a "permanent" structure on state lands. Parcing with DLNR over the difference between conservation lands, unencumbered, or submerged lands, only distracts from the fact that these are all basically "public lands." The general public moreover is likely to treat these areas generally as public beaches, as Kuleana parcels, easements, and or as public trails (I suspect these are the same classifications given by the courts). The problem therefore is with DLNR, who continues to fail to apply the correct term to the problems they encounter at a public beach or state harbor. The point is even when they are clearly within their jurisdiction to issue citations (enforce the law), DLNR officials will still fail to process a complaint. Addressing the Waikiki situation directly in these bills is therefore the only way to get DLNR to abandon its long held grandfather policy. Doing this will in tern close the loop holes that have long been exploited both by DLNR and by commercial interest. I've included in my testimony official statements regarding the Waikiki situation. These statements where offered both by the new chair and by Peter Young who is no longer at DLNR. I've also include a sample of a Waikiki hotel RFP along with newspaper articles that show intense

public conflict over what is wrongly termed a "resort" beach. Lastly I've included some history of the way DLNR dealt with the C&K bankruptcy that occurred at Dukes beach, this involved the Hilton taking over the beach contract from C&K. Multiple permit violations where simply overlooked by DLNR in the process leading up to the Hilton taking over the concession from C&K in 2006.

Solution to the so called creative commercialism phenomonon....

Direct the new DLNR Chair to emediately revoke all blue cards and ORMA decals, and to initiate a Chapter 91 process for issuance of commercial permits pursuant to state law etc. HB 3178, HB 3177 are part of the governors package but SB 2196 and HB 2332, could futher establish or require commercial permitting for all companies using a public beach for business. By requiring permits the hotels along the Waikiki shoreline would no longer be allowed to issue RFP's nor would DLNR be allowed to treat shoreline hotels any differently than anyone else. The bill requiring Conservation District Use Permits (HB 2332) was rejected by DLNR and by the commercial lobby, leaving me wonder if there are forces working to thwart any sort of effort requiring permiting. The wedding industry is already begging for exemptions, next the surf schools will be demanding the same treatment!

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