

# LATE TESTIMONY

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March 8, 2010

HONORABLE KENNETH ITO

Chair

Water, Land & Ocean Resources Committee  
48<sup>th</sup> Representative District  
Room 420, Hawaii State Capitol  
415 So. Beretania Street  
Honolulu, Hawaii 96813

VIA FACSIMILE

Re: SB 2019, S.D. 1  
Hearing: 3/8/10  
Time: 10:00 a.m.  
Room 325

Representative Ito:

I represent X-Treme Parasail, Inc., Diamond Head Parasail, Inc. and Diamond Head Parasail & Watersports, Inc., three commercial water sports companies that operate out of Kewalo Basin.

SB 2019, S.D. 1 is the companion to HB 2347, H.D. 2. My clients support both measures to the extent they propose to amend Hawaii Revised Statute §200-37 by eliminating the requirement that commercial parasail and jet ski permits must be put out for public auction every 20 years. Making the permits renewable on a year to year basis in perpetuity, as long as the permit holder is in compliance with statutory and regulatory requirements for renewal, is long overdue and does nothing more than give commercial parasail and jet ski operators parity with rights already held by every other commercial ocean operator.

My clients, however, have two concerns regarding SB 2019, S.D. 1, as currently drafted. First, SB 2019, S.D. 1 lacks any provisions that explain what happens to a parasail and/or jet ski permit when it is: 1) revoked because an operator is not eligible for renewal under HRS §200-37(m)(1)-(3); 2) revoked because of unsafe

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operations or other violation of law as referenced in HRS 200-37(k); or 3) is voluntarily surrendered by a permit holder. I think language that clarifies when the permit is recovered by Department of Land & Natural Resources, Division of Boating & Ocean Recreation ("DOBOR") under any one of these circumstances, the permit may be reissued by public auction is crucial. HB 2347, in part, acknowledges this concern because it proposes to revise HRS §200-37(n) to state, "Upon revocation of a permit for failure to meet the conditions for renewal, the department shall offer the permit for public auction." On this issue, HB 2347, H.D. 2, is preferred to SB 2019, S.D. 1, but also requires further modification as outlined.

My clients' second concern with SB 2019, S.D. 1 is the latest amendment to add paragraph HRS §200-37(m)(4) is superfluous. In its entirety the proposed language states:

- (4) The permit holder shall be in compliance with any conditions required by the department in response to community or other complaints filed with the department.

This proposed language is redundant with language and police powers already granted DOBOR under HRS §200-37(k) and (m)(1). Under the section (k), DOBOR has the ability to immediately revoke a commercial parasail and jet ski permit for any conduct that endangers the health or safety of passengers or the public. DOBOR also has the authority to suspend a permit for any violation of DOBOR's Administrative Rules. Section (m) (1) already states that a commercial parasail or jet ski permit is not eligible for renewal in cases where the permit holder is not in compliance with all applicable rules of DOBOR.

Clearly, the proposed amendment does not cover new ground. It is merely a misguided attempt to address a concern expressed by a single individual that testified in opposition to the bill because they wanted the opportunity to participate in the permit renewal process in an attempt to persuade DOBOR not to reissue the parasail permits for Maunalua Bay. Instead of explaining this measure did not address that concern and having the DOBOR Administrator, Ed Underwood, and DLNR Chair, Laura Thielen, who were present at the hearing, explain there are already procedural rules in place that address these concerns, the Committees for Economic Development & Technology and Water, Land Agriculture & Hawaiian Affairs, drafted this revised language.

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As a result, although my clients strongly support the general intent of these measures, HB 2347, H.D. 2 is the preferred alternative to SB 2019, S.D. 1. If you have any questions, please do not hesitate to contact me.

Sincerely,

Bryan Y.Y. Ho

cc: Hon. Sharon E. Har (Vice Chair)  
Hon. Rida Cabanilla  
Hon. Jerry L. Chang  
Hon. Pono Chong  
Hon. Denny Coffman  
Hon. Robert N. Herkes  
Hon. Chris Lee  
Hon. Sylvia Luke  
Hon. Hermina M. Morita  
Hon. Roland D. Sagum  
Hon. Corinne W.L. Ching  
Hon. Cynthia Thielen

# LATE TESTIMONY

HAWAIIAN PARASAIL INC.  
1085 Ala Moana Blvd. #101  
Honolulu, Hawaii 96814

March 7, 2010

**HOUSE COMMITTEE ON WATER, LAND & OCEAN  
RESOURCES**

State Capitol Bldg. room 325  
Hearing of SB2019  
March 8, 2010 at 10 am.

Written testimony of Mark Neumann

To Chairman **KEN ITO** and members,

In '1976, I introduced Parasailing to Hawaii. I've spent 30 plus years of hard work since, working early morning to late at night 7 days a week helping to build this industry into the hugely popular attraction it now is statewide.

We were in the business years before being subjected to regulations under the permit system, forced to except this regulation in question. Some of the other Parasail and Jet Ski operators are also part of the early pioneers here. Most of these companies have many employees who have been trained for years in becoming professionals at their respective positions, maintaining the utmost degree of safety necessary with such an activity that has customers nearly 500 feet in the air. Some of these employees are the best there is at what they do, having dedicated a good part of their lives also with their respective companies.

There is "safety, discrimination, moral and legal issues here."

The "safety issue" is that safety could be compromised by taking away the permit of these professionals and auctioning it off to some other company who might be inexperienced with conditions in that area or with parasailing in general. Vessel and equipment maintenance is critical, as well as training and experience in all forms of weather.

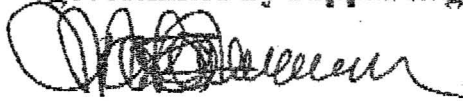
**The "discrimination issue". Parasailing and jet skiing are the only commercial ocean activities permitted by the DNLR subjected to such a devastating regulation that abruptly ends their lifelong business and dreams. Why are we singled out like this.**

**There is the "moral issue". Who in their right mind thinks it could be justifiable to take away ones permit who is in good standing with the department, without cause, reason or due process, especially after already permitting use for 20 years. This is morally despicable, a definite case of government gone wrong. DLNR provides nothing of substance, only permission, in the form of a piece of paper and sticker, while collecting 3% of gross income for it. They then feel free to manipulate these vulnerable businessmen even further with regulations that are not unlike communism, contradicting the very concept of business.**

**There is also a "legal issue". These parasail and jet ski operators promote tourism, yet are expected to risk their life savings with business that has government in place at the end of the rainbow to reap the rewards of their prosperity instead, after 20 years of blood, sweat and tears. What justifies governments' role in destroying these good entrepreneurs' lives at a point when they will be too old to pick up the pieces and start all over again. This is not supposed to happen in a free society under a democratic government. Revenue generating in this manner should be condemned as it possibly violates ones constitutional right to the pursuit of happiness and prosperity. The taking away of the permit in this manner feels like theft, then the auction process, extortion, for selling back the permit to the original holder.**

**The price tag for the permit of a successful company will likely be too high for the original permit holder to buy back. The value of his success becomes the cost he has to pay to hold on to his business, spelling disaster. The manipulation of laws by government at the expense of small business. The 3% of gross is quite high already, is this not revenue generating enough, is this not fair enough given what little DLNR provides in return. DLNR should look to other ways and means of generating more revenue than destroying good hard working people's lives who essentially were loyal business partners for 20 years.**

**Finally yet importantly, this regulation requiring permit removal and subsequent auctioning off thereafter is an anti economic stimulus. In a climate having businesses all over the country closing, then you have government purposely and forcefully taking away a perfectly legitimate and successful business. This is shameful. Help to correct bad governance by supporting SB2019.**



**MARK NEUMANN**

**PRESIDENT OF HAWAIIAN PARASAIL INC.**

# Request for floating platform off Waikiki runs into flak

By JAKE WILLIAMS  
Advertiser Staff Writer

Four hotels and three organizations objected at a public hearing last night to a proposal to place a floating platform off Waikiki, but the State Board of Land and Natural Resources put off a decision until next month.

Mar. Neumann is seeking board approval to place a 25 by 35 foot platform 3,500 feet offshore from the Royal Hawaiian Hotel to launch and land paragliders.

The board also heard an application to permit to expand a Kaneohe Yacht Club floating pier to 100 boats. There was no opposition to the proposal to expand the pier by some 100 feet in the southwest corner of Kaneohe Bay.

Decisions will be made on both applications at the board's second meeting in

February. No date has yet been set for that meeting.

This morning the board meets at 10 a.m. and is scheduled to consider a proposal for 55-year leases to Mokuaiea Island fishermen as an educational and scientific community.


Neumann's proposal would bring a new activity to Waikiki. Paraglide business has been operating off Kona since last year. Riders are strapped into a parachute and pulled by a jet-powered boat at the end of a 300-foot line. Each line carries about 150 feet.

Those opposing the plan included a variety of critics, including police, park ranger, fishermen and water skiers. A boat from the platform will have impact. The land board will also require a study on the impact of

statements, but several government agencies raise concerns.

The Office of Environmental Quality Control was concerned about noise from the boat and suggested that riders be picked up at Ala Moana harbor instead of a small coral beach near TI DeRussy, as proposed by Neumann.

The Department of Transportation believes there will be a conflict with other use and questioned the stability of the two 50-pound concrete anchors that would hold the platform in place. The Department of Planning suggested that the platform be towed in and from the site. The State Department of Public Works also questioned the platform's stability and suggested that the platform be towed in and from the site.



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**From:** annmarie@hawaii.rr.com  
**Sent:** Sunday, March 07, 2010 11:39 PM  
**To:** WTLTestimony  
**Cc:** Rep. Ken Ito; Rep. Sharon Har  
**Subject:** Testimony Against SB 2019 SD 1- Public Release with No Public Dialog Needs to Stop

Senate Bill 2019 SD1  
Monday, 03-08-10 10:00AM in House conference Room 32  
RELATING TO THE MAXIMUM TERM OF COMMERCIAL USE AND OPERATOR PERMITS FOR THRILL CRAFT AND PARASAILING

## **Testimony Against SB 2019 SD1 Public Resource with No Public Dialog Needs to Stop**

Aloha Chair Ito and the Water, Land and Ocean Resource Committee Members,

While Senate Bill 2019 effects statewide thrill craft permitting, the importance of each community effected and each ocean area should not be lumped together. This is not right. Each community should have a say in what is right for their waters. They should be included in the conversation.

**Maunalua Bay in East O'ahu is one ocean area effected by SB 2019.**

The community in East O'ahu last year was very involved in legislative decision making to be sure the 7 day a week commercial activity in Maunalua Bay AND the changing of the permitting process to allow commercial operators to have permits in perpetuity, thus creating an unfair monopoly on a public resource, was STOPPED.

The community should have been engaged this year in a fair and transparent legislative process. This did not happen. **The community was purposely left out of the conversation. SB 2019 should be deferred until 2011 so proper information and communication can be discussed between the community, DLNR and commercial operations. This would be fair to all parties.**

The permitting process deals with a public resource in a heavily used community bay. The voice of the community needs to be heard, and not a voice heard by legislators as community members chase after a bill after the wheels have been set in motion. This is unfair. This is un-democratic. **The dialog taking place so far this legislative session does not reflect an accurate account of community sentiments regarding Maunalua Bay to the WTL committee. Why? Community was left out of the conversation.**

The last community meeting about the large scale use of Maunalua Bay was in 1986. Since 1986 the size of Maunalua Bay has not changed, what has changed dramatically in size is the increased population of the community. Maunalua bay today is used by fishermen, boaters, paddlers, surfers, stand up paddle boarders, one man kayakers, one man outrigger canoe paddlers, divers and swimmers. And many people come from all different parts of O'ahu to use Maunalua Bay for these activities.

The use of Maunalua bay needs to be re-addressed before permit changes take place regarding ocean activity in the waters of Maunalua.

There have been accidents in the bay, there were 2 deaths in this last year. One from a community incident and one from commercial operation usage.

There have been numerous near accidents. Allowing a change in the permit process without community input is wrong.

Someone said, well it's just the permit - **it's more than just the permit - it's approval of a commercial activity that effects Maunalua Bay on a daily basis, a bay that means a great deal to our community and needs to have proper discussion.**

**SB 2019 should be stopped.**

However, if you vote to move SB 2019 forward then I humbly ask you include the following amendments:

\* The community must have a voice in the permitting process on a public resource - not just presenting information to DLNR and for that office to



decide what should be done with the information they receive. Community organizations should be involved in the approval process of a public resource.

\* 1 year Permit approval based on safety records and, equally important, scientific and community evidence of the effects of commercial activities on the health of the bay/ocean area. Scientific data to be provided by Malama Maunalua and government agencies who have been studying Maunalua bay.

If the commercial activities are disturbing the marine eco-system then the permit should be revoked

\* 1 year permit - after 5 years the permit goes to public auction. (This creates a fair process for businesses. Otherwise this bill creates a monopoly for 2 business

owners in Maunalua Bay in perpetuity.)

\* In 2015 thrill craft operators will move jet ski operations out of Maunalua Bay and into deeper waters outside of Maunalua.

\* No permits are to be sold/traded or given without community input and approval. A community resource, a public resource, should not be sold or traded with out any input from community organizations.

Mahalo for your consideration of my testimony.

Aloha,  
Ann Marie Kirk

Maunalua Bay User  
East O'ahu Resident

[annmarie@hawaii.rr.com](mailto:annmarie@hawaii.rr.com)

# LATE TESTIMONY



March 8, 2010

## COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Rep. Ken Ito, Chair

Rep. Sharon E. Har, Vice Chair

- |                       |                           |
|-----------------------|---------------------------|
| Rep. Rida Cabanilla   | Rep. Sylvia Luke          |
| Rep. Jerry L. Chang   | Rep. Hermlna M. Morita    |
| Rep. Pono Chong       | Rep. Roland D. Sagum, III |
| Rep. Denny Coffman    | Rep. Corinne W.L. Ching   |
| Rep. Robert N. Herkes | Rep. Cynthia Thielen      |
| Rep. Chris Lee        |                           |

RE: SB-2019, SD1 – LATE TESTIMONY

Honorable Chair Ito and Vice Chair Sharon Har:

Thank you for hearing this bill. My name is Jeffrey Krantz, president of SeaBreeze Parasailing Co., Ltd., and I just learned of this hearing and am in process of driving one of our vessels.

I have testified many times in front of most of you and I believe you understand the core issue around the 20 year limit on our permits. It is both unfair and discriminatory to single out one type of business (thrill craft which includes Jet Ski and Parasail) and impose a finite term on their permits. No other commercial watersports business is subject to this punitive measure.

DL&NR confirms we are the only watersports business that is subject to this type of requirement. In fact, it is written in the statutes and not the administrative rules which are issued to govern watersports activities including jet ski and parasail.

When the bill was sent to the Senate they added Item #4 - "The permit holder shall be in compliance with any conditions required by the department in response to community or other complaints filed with the department". I cannot support this bill as long as this amendment is included, it is discriminatory and unfair.

This provision is also discriminatory to Parasail and Jet Ski (Thrill Craft); it only applies to these businesses and not the other commercial watersports businesses. We are sensitive to community issues; we have done much in our particular community. If the community is the concern, it should

Parasailing

Jet Skiing

Banana Boat

Diving

and more..



DL&NR has administrative authority and jurisdiction of these, are in response to community concerns and environmental studies. We have been operating for over 23 years and abide by all of DL&NR, USCG as well as Federal and State regulations.

Please delete item #4 and advance this measure.

Sincerely,

Jeffrey Krantz  
President

Parasailing

Jet Skiing

Banana Boat

Diving

and more...



# LATE TESTIMONY

March 8, 2010

## COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Rep. Ken Ito, Chair

Rep. Sharon E. Har, Vice Chair

Rep. Rida Cabanilla	Rep. Sylvia Luke
Rep. Jerry L. Chang	Rep. Hermina M. Morita
Rep. Pono Chong	Rep. Roland D. Sagum, III
Rep. Denny Coffman	Rep. Corinne W.L. Ching
Rep. Robert N. Herkes	Rep. Cynthia Thielen
Rep. Chris Lee	

RE: SB-2019, SD1 – LATE TESTIMONY

Honorable Chair Ito and Vice Chair Sharon Har:

Thank you for hearing this bill. It has affected many of us for a long time. My name is Kathleen Takahashi and I work for SeaBreeze Parasailing Co. The 20 year limit on our permits is both unfair and discriminatory to single out one type of business (thrill craft which includes Jet Ski and Parasail) and impose a finite term on their permits. No other commercial watersports business is subject to this punitive measure.

DL&NR confirms we are the only watersports business that is subject to this type of requirement. In fact, it is written in the statutes and not the administrative rules which are issued to govern watersports activities including jet ski and parasail.

When the bill was sent to the Senate they added item #4 - "The permit holder shall be in compliance with any conditions required by the department in response to community or other complaints filed with the department". I cannot support this bill as long as this amendment is included, it is discriminatory and unfair.

This provision is also discriminatory to Parasail and Jet Ski (Thrill Craft); it only applies to these businesses and not the other commercial watersports businesses. We are sensitive to community issues; we have done much in our particular community. If the community is the concern, it should apply to all commercial watersports businesses not just one particular type. We end up with another discriminatory and unfair measure aimed at one particular business.

Parasailing

Jet Skiing

Banana Boat

Divining

and more...

DL&NR has administrative authority and has developed rules; many of these are in response to community concerns and environmental studies. We have been operating for over 23 years and abide by all of DL&NR, USCG as well as Federal and State regulations.

Please delete item #4 and advance this measure.

Thank you

Kathleen Takahashi