

COUNCIL OF THE COUNTY OF MAUI

PARKS AND RECREATION COMMITTEE

April 5, 2002

Committee
Report No. 02-51

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Parks and Recreation Committee, having met on September 19, 2001, December 5, 2001 and March 13, 2002, makes reference to a Miscellaneous Communication dated May 21, 2001, from the County Clerk, referring the matter relating to fees for ocean recreational activity business permits (permits) to your Committee (referred by your Budget and Finance Committee through Committee Report No. 01-78).

By correspondence dated August 21, 2001, your Committee Chair transmitted a letter dated August 14, 2001, from Nancy Emerson, Nancy Emerson School of Surfing, providing recommendations for establishing regulations for surfing schools.

By correspondence dated August 21, 2001 and September 18, 2001, your Committee Chair transmitted letters dated August 12, 2001 and September 18, 2001, respectively, from Rebecca Lafferty, Wailea Watersports, providing comments for regulations of ocean recreational activities.

By correspondence dated August 31, 2001, your Committee Chair requested that the Director of Finance provide a list of current permits having expiration dates within the years 2001 and 2002.

At its meeting of September 19, 2001, your Committee met with the Director of Parks and Recreation; the Director of Finance; Charles Penque, Small Boat Harbors Division District Manager and Jason Koga, District Land Agent, State Department of Land and Natural Resources (DLNR), and a Deputy Corporation Counsel.

Your Committee received testimony from 15 individuals who spoke in opposition to an increase in ocean recreational activity business permit fees (permit fees) and in support of the need for self-regulation of certain ocean

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recreational activities and the creation of carrying capacity limits for County beach parks.

Your Committee received photographs highlighting certain ocean recreational activity businesses (recreational businesses) at various County beach parks.

Mr. Penque provided your Committee with an overview of the benefits of self-regulations for windsurfing. He stated that the DLNR assisted in developing self-regulations for certain recreational businesses to resolve concerns at Kanaha Beach Park. He encouraged your Committee to work with recreational businesses to establish self-regulations prior to enacting new ordinances. He indicated that based on the experience at Kanaha Beach Park, self-regulations and setting standards for operations have been very effective. Furthermore, he suggested that the County should set limits on the number of recreational businesses at each County beach park. He also indicated that the DLNR permit fee for recreational businesses is 2 percent of gross receipts.

The Director of Parks and Recreation provided your Committee with an overview of the matter. He stated that the issues of safety, carrying capacity and the creation of self-regulations are vital to addressing the concerns at County beach parks. He further stated that the Department of the Corporation Counsel is drafting legislation that would shift the control of issuing permits from the Department of Finance to the Department of Parks and Recreation. He further stated that each park is site specific; therefore, special attention and planning to address the needs at each County beach park are required.

Your Committee noted the significance of encouraging recreational businesses to establish self-regulations to assist in addressing overcrowding at County beach parks. Your Committee also noted that self-regulation would be more expeditious in addressing the matter and may prevent the need for passing legislation. Your Committee further noted that certain recreational businesses should adopt the self-regulations imposed by windsurfing and kiteboarding businesses to restrict operations on Sundays and holidays. Your Committee deferred the matter pending further discussion.

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By correspondence dated October 11, 2001, the Director of Finance provided lists consisting of current permit holders categorized by expiration dates.

By correspondence dated November 6, 2001, your Committee Chair transmitted a facsimile letter dated September 10, 2001, from concerned citizens requesting the prohibition of kiteboarding along Ho'okipa Beach Park.

By correspondence dated December 3, 2001, your Committee Chair transmitted the following documents from Brian DeCook, President, Maui Association of Surfing Schools (MASS): (1) minutes from their meeting of November 25, 2001; and (2) the MASS membership list.

By correspondence dated December 3, 2001, Councilmember Wayne K. Nishiki, transmitted a copy of the Economic Development, Tourism and Environment Committee Report No. 95-214 (Council term 1995-1997), relating to regulations for permits and fees of recreational businesses for information.

At its meeting of December 5, 2002, your Committee met with the Director of Parks and Recreation; the Director of Finance; the Aquatic Chief of Parks and Recreation; a Deputy Corporation Counsel; Alan Cadiz, Hawaiian Sailboard Techniques, representing windsurfing; Martin Kirk, Hawaii Kiteboarding Association, Maui Chapter, representing kiteboarding; and Brian DeCook, President, MASS, representing surfing.

Your Committee received testimony from two individuals encouraging the creation of self-regulations of recreational businesses. One testifier stated that he was involved in the formation of self-regulations for kayaking and windsurfing operations and indicated that these guidelines have been very effective for business operators and the public.

Your Committee heard a panel presentation regarding the creation of self-regulations. Mr. Kirk, representing the kiteboarding industry, and Mr. Cadiz, representing the windsurfing industry, stated that self-regulations have been in place for a number of years for both industries. Mr. Kirk and Mr. Cadiz concurred that these guidelines are very effective in setting standards for operations at

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various County beach parks. Mr. Kirk and Mr. Cadiz both stated that no instruction is permitted on Sundays and holidays by either industry. They further indicated that business operations end in the early afternoon because ocean conditions are not conducive for instruction. Mr. DeCook, President of MASS, stated that the organization recently formed to help establish self-regulations for the surfing industry. Mr. DeCook stated that MASS is recommending to its members that no instruction be conducted on Sundays, holidays and afternoons, similar to kiteboarding and windsurfing operations. Mr. DeCook also stated that the County must assist with enforcement of businesses and individuals operating without a license and the illegal collection of funds at the beach parks.

Your Committee noted that because of physical constraints, such as parking, size of beach park areas and the growing popularity of ocean recreational activities, certain County beach parks are unable to adequately handle recreational businesses while allowing for the enjoyment by the general public. Your Committee further noted that limits should be placed on the number of permits issued for each beach park. The physical constraints of parks should be a factor in determining the number of permits issued. Your Committee noted that by allowing the unlimited issuance of permits at beach parks with physical constraints, such as Launiupoko Beach Park, Cove Park (the Cove) and the southern portion of Kalama Park (Kalama Park), overcrowding has occurred. Your Committee notes that for the purpose of this item, the southern portion of Kalama Park is defined as the area immediately adjacent to the sand beach at the Cove, including the area utilized by the Wailea Canoe Club to the southern most parking area along South Kihei Road. Your Committee also noted that recreational businesses should cease at the Cove and Kalama Park in Kihei. Your Committee expressed a concern that the public use of the beach parks should be a priority over recreational businesses. Therefore, your Committee requested that the Departments of Finance and Parks and Recreation review the operations of recreational businesses at certain beach parks. Your Committee also requested a list of current permit holders, including the locations the businesses are authorized to operate. Your Committee deferred the matter pending further discussion.

By correspondence dated February 8, 2002, the Council Chair transmitted a letter dated February 6, 2002, from Kenneth DeLima, Jr., relating to the impacts of business operations at the Cove and Kalama Park.

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At its meeting of March 13, 2002, your Committee met with the Director of Parks and Recreation; the Director of Finance; the Assistant Chief of Police; a Deputy Corporation Counsel; and Martin Kirk, Hawaii Kiteboarding Association, Maui Chapter.

Your Committee received testimony from four individuals expressing concerns about over-crowding at the Cove and Kalama Park. The testifiers further indicated their support to discontinue the issuance of permits at the above-referenced locations. One testifier stated the permit fees should remain the same unless the revenues generated by the increase are used for the enhancement of County beach parks and facilities.

Your Committee received the following items at the meeting:

1. Correspondence dated February 6, 2002, from Kenneth DeLima, Jr., to the Director of Finance, transmitting concerns about carrying capacity and recreational business operations at the Cove and Kalama Park; and
2. Correspondence dated March 11, 2002, from the Kihei Park Shore, Board of Directors, outlining concerns about business operations at the Cove and Kalama Park.

Your Committee received a presentation from Martin Kirk, Hawaii Kiteboarding Association, representing various recreational businesses. Mr. Kirk indicated that representatives from the scuba, kayaking, surfing, windsurfing and kiteboarding industries have been conducting meetings with the Department of Parks and Recreation to discuss possible regulations addressing carrying capacity issues at County beach parks. Mr. Kirk stated that the representatives from recreational businesses have been working with the Department of Parks and Recreation to develop recommendations to submit to your Committee for consideration. Mr. Kirk further stated that recreational businesses could support an increase in permit fees if the revenues were directed to a fund that would provide such beach parks enhancements as hiring park rangers, installing restrooms and shower facilities, maintenance and repairs, and ocean safety education.

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The Director of Parks and Recreation stated that the Department is working with recreational businesses and Maui Community College to develop safety certification courses for ocean activity instructors and carrying capacity limitations for business operations at beach parks.

The Director of Finance stated that the Department is not issuing new permits as a result of carrying capacity concerns at certain County beach parks. He stated that the moratorium on the issuance of new permits will be in effect until carrying capacity matters are appropriately addressed and Chapter 5.24, Maui County Code, relating to Ocean Recreational Activity Business Permits (Chapter 5.24), is revised to enhance regulations and enforcement. He further stated that the Department of the Police must be involved in the revisions to the ordinance to help assist with enforcement.

Your Committee noted the concerns raised about recreational business operations at the Cove and Kalama Park. In response to an inquiry by your Committee, the Deputy Corporation Counsel stated that Chapter 5.24 grants the Director of Finance the authority to deny permits and apply conditions to permits which includes restricting operations at certain beach parks. He further stated that the Department of the Corporation Counsel is amending Chapter 5.24 to grant the Director of Parks and Recreation the authority to issue the permits. He recommended that your Committee may wish to consider further revisions to Chapter 5.24 to prohibit the issuance of permits at certain County beach parks, such as the Cove and Kalama Park.

Your Committee expressed a desire to address the above-referenced matter in the revisions to Chapter 5.24; however, your Committee stated that it would prefer to offer an immediate response to the matter. Therefore, your Committee requested that a resolution be drafted urging the Department of Finance to discontinue the issuance of new and renewed permits for the Cove and Kalama Park. Your Committee recommended adoption of the proposed resolution.

Your Committee also noted that permit fees should remain at the base rate of \$250. However, your Committee expressed a desire to attach a percent of gross receipts to the existing permit fee. Your Committee suggested that the percentage of gross receipts should be discussed during the Fiscal Year 2003

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budget deliberations. Furthermore, your Committee noted that permits should be site specific, therefore granting recreational businesses the authority to operate at only one location per permit. Your Committee indicated that should the recreational business wish to conduct an activity at other beach parks, additional permits and fees would be required per location.

Your Committee voted to submit the following recommendations to the Budget and Finance Committee for ocean recreational activity business permit fees for the Fiscal Year 2003 Budget:

1. Maintain the existing permit fee at \$250 and include a percentage of the recreational business gross receipts. The percentage amount shall be discussed during budget deliberations.
2. Establish a park enhancement fund (Fund), for the purpose of subsidizing the hiring of park rangers, installing restroom facilities and showers, maintaining and repairing beach parks, and providing water safety training. The permit fees, including the percentage of gross receipts, with the exception of a portion for administrative processing, shall be accrued to the Fund.
3. All permits shall be site specific, which shall authorize recreational businesses to conduct operations at only one beach park per permit. Recreational businesses that desire to perform an activity at other beach parks must obtain additional permit(s) and will be required to pay additional fees.

Your Committee deferred the matter relating to regulations for ocean recreational activity business permits pending further discussion.

Your Parks and Recreation Committee RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled "URGING THE DEPARTMENT OF FINANCE TO DISCONTINUE THE ISSUANCE AND RENEWAL OF OCEAN RECREATIONAL ACTIVITIES BUSINESS PERMITS AT CERTAIN COUNTY PARKS IN KIHEI", be ADOPTED; and

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2. That a copy of this committee report be TRANSMITTED to the Budget and Finance Committee.

Adoption of this report is respectfully requested.

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JO ANNE JOHNSON Chair

MICHAEL J. MOLINA Member

ROBERT CARROLL Vice-Chair

CHARMAINE TAVARES Member

PATRICK S. KAWANO Member