

recognizes that the other Party is not changing its position or otherwise conceding whether the Lagoon should or should not be designated as a “swimming pool” and thus subject to the “swimming pool regulations” found in Travis County Health and Public Safety Regulations, Chapter 61A, Texas Administrative Code, Title 25, Part 1, Chapter 265, Subchapter L and Texas Health and Safety Code Section 341.064.

2. From and after the date of this Temporary Injunction, NLand Surf Park will modify its perimeter fencing subject to the modifications hereafter negotiated in good faith and agreed upon by the Parties. NLand Surf Park will utilize 24-hour on-site personnel, including overnight security, to monitor the park and access to the Lagoon during the term of this Temporary Injunction.

3. NLand Surf Park will employ at least one Certified Pool Operator (“CPO”) (a National Swimming Pool Foundation certification), or one Aquatic Facility Operator (“AFO”) (a National Recreation & Park Association Certification), and at least one such individual will be on-site or on-call during operation of the Lagoon and will oversee the testing procedures outlined below.

4. NLand Surf Park will monitor the water quality in the Lagoon by implementing the following testing schedule. Lagoon water testing will be performed either by NLand Surf Park (pH, chlorine, *E. coli*, and turbidity) or by an independent service company (tests described in Exhibit A) that contracts with a National-Environmental-Laboratory-Accreditation-Program-accredited laboratory, as set forth herein and in the QAPP described herein below.

a. On each day the Lagoon is open to the public, the Lagoon will be tested four times a day—once at opening and three additional times before closing—for chlorine and pH.

The four tests will be evenly spaced throughout the Lagoon’s operating hours. Each

test will consist of at least four samples – one from each quadrant of the Lagoon. The acceptable level of chlorine is a minimum of 1.0 ppm free residual chlorine and a maximum of 8.0 ppm free residual chlorine. The acceptable pH is a minimum of 7.0 and a maximum of 7.8. In the event any such test indicates that the Lagoon water chemistry falls outside of either of these parameters (a “Chlorine/PH Test Variance”), then comparison duplicates will be promptly checked with calibrated operator equipment or such redundant systems available to NLand Surf Park. If the duplicate testing also indicates a Chlorine/PH Test Variance then NLand Surf Park will close the Lagoon to the public until subsequent testing confirms that acceptable levels of both chlorine and PH have been re-established in the Lagoon. Any Chlorine/PH Variance shall be confirmed and recorded by a CPO or an AFO, who will document all corrective actions and resultant changes in relation to any incident.

- b. NLand Surf Park will test the Lagoon daily, between noon and 2:00 p.m., for *E. coli*. The *E. coli* test will consist of four samples taken as close to the center drain as safely and practically possible, proportionately spaced along the length of the drain. The acceptable level for *E. coli* in the Lagoon is 0 (zero) CFUs/100 ml, or a negative result for the presence of *E. coli*. The foregoing notwithstanding, so long as the presence of *E. coli* in the Lagoon does not exceed 60 CFUs/100ml NLand Surf Park shall have no obligation to close the Lagoon to the public if NLand Surf Park thereafter commences twice daily testing for *E. coli* for so long as the presence of *E. coli* in the Lagoon exceeds 0 (zero) CFUs/100 ml. In the event that any test result shows the presence of *E. coli* at a concentration higher than 60 CFUs/100ml, the Lagoon will be closed until an acceptable level is achieved. Each *E. coli* test result

in excess of 0 (zero) CFUs/100 ml must be confirmed and recorded by a CPO or an AFO, who will document all corrective actions and resultant changes in relation to any incident.

- c. NLand Surf Park will test the Lagoon for the organic, inorganic, microbial, and other contaminants (collectively “Additional Contaminants”) at the frequency described in Exhibit A attached hereto. Each test will consist of four samples, one from each quadrant of the Lagoon. Acceptable levels for the Additional Contaminants will be measured against the standards set for such Additional Contaminants on Exhibit A. In the event that any Additional Contaminant fails to meet the applicable established standard, the Lagoon will be closed to the public until a subsequent test confirms that an acceptable level is achieved. Any adverse test results must be confirmed and recorded by a CPO or an AFO, who will document all corrective actions and resultant changes in relation to any incident.
- d. NLand Surf Park will test the Lagoon daily for turbidity. This test shall be conducted prior to starting the Lagoon’s wave generation. Turbidity will be recorded for use in analyzing the Lagoon’s water data.

5. NLand Surf Park will monitor the water quality in the Reservoir by implementing the following testing schedule. Tests will be performed either by NLand Surf Park or by an independent service company that contracts with a National-Environmental-Laboratory-Accreditation-Program-accredited laboratory as set forth herein and in the QAPP described herein below.

- a. NLand Surf Park will test the Reservoir weekly for pH and *E. coli*, and after every significant rain event. For purposes of this Temporary Injunction, a “significant rain

event” means more than 2.0 inches of rainfall in the area of the Reservoir in a 24-hour period. Since the public will not be exposed to water in the Reservoir prior to its treatment by the Lagoon’s disinfection system, this testing is not subject to set parameters and instead will provide a baseline for comparison to the Lagoon results, demonstrating the efficacy of the disinfection system.

- b. NLand Surf Park will test the Reservoir monthly for nitrates and nitrites, and after every significant rain event. Since the public will not be exposed to water in the Reservoir, this testing is not subject to set parameters and instead will provide a baseline for comparison to the Lagoon results, demonstrating the efficacy of the disinfection system.

6. NLand Surf Park will submit the Lagoon testing results described in Section 4(a), (b), and (d) above, on a weekly basis, via email to Travis County’s attorney of record or such other designated Travis County representative during the pendency of this Temporary Injunction (the “County Testing Recipient”). NLand Surf Park will submit the Lagoon testing results described in Section 4(c) above promptly upon receipt via email to the County Testing Recipient. If the results of any Lagoon test fall outside of the acceptable parameters described herein, NLand Surf Park will notify the County Testing Recipient via email within one hour of receipt of an adverse test result, ensure that the Lagoon is closed to the public, and describe the measures that will be undertaken to ensure that the result is within acceptable parameters before the Lagoon is reopened to the public. Once NLand Surf Park achieves a subsequent test result falling inside the acceptable parameters described herein (following the result of any Lagoon test falling outside of the acceptable parameters described herein), NLand Surf Park will notify the County Testing Recipient via email of the subsequent acceptable test result and NLand Surf Park

shall thereafter, subject to the terms hereof, have the right to open the Lagoon to the public without further condition or delay. In the event that either (1) NLand Surf Park fails to submit the testing results on a regular and timely basis, or (2) fails to voluntarily close the Lagoon to the public as required herein, Travis County will notify NLand Surf Park's counsel of record that it has failed to comply with the terms of this Temporary Injunction. If NLand Surf Park fails to respond or, if required, close the Lagoon to the public, then Travis County may itself close the Lagoon to the public until testing demonstrates that the adverse result has been corrected. Separately, NLand Surf Park will submit the testing results for the Reservoir described in Section 5 to the County Testing Recipient via email promptly upon receipt.

7. NLand Surf Park will keep all testing results of both the Lagoon and the Reservoir onsite and available for inspection by Travis County during normal business hours.

8. A closing of the Lagoon to the public based on water testing results means that all public activity in the Lagoon will cease until appropriate water quality levels are reestablished as described herein. Other onsite facilities at NLand Surf Park that do not involve direct public exposure to Lagoon water, including the gift shop, brewery, and restaurant, will not be forced or required to close pursuant to this injunction.

9. The only aquatic activity NLand Surf Park will allow in the Lagoon is surfing, body boarding, and stand-up paddle boards. NLand Surf Park will require all persons utilizing the Lagoon to wear a leash attached to a floating surfboard, body board or stand-up paddle board. NLand Surf Park will control entry and egress to the Lagoon via six "Launch Pads" placed around the Lagoon and will not allow unsupervised or unauthorized entry into the Lagoon.

10. All NLand "Water Operation Team Members" will be licensed by National Aquatics Safety Company LLC (NASCO) as Deep Water Lifeguards. During operation of the

entire Lagoon facility, eight Water Operation Team Members will be positioned in lifeguard chairs around the Lagoon, or four Water Operation Team Members will be positioned in lifeguard chairs around the side of the Lagoon that is open to the public. Several additional Water Operation Team Members will be with members of the public in the Lagoon.

11. NLand Surf Park will provide appropriate safety training to all members of the public who utilize the Lagoon as permitted herein.

12. NLand Surf Park will have in place emergency protocols, including emergency communication and an onsite Basic Life Support First Aid facility in the Lagoon area that is staffed by an on-site EMT during Lagoon operating hours.

13. Travis County is authorized to conduct, at its own expense, water quality testing of the Lagoon and the Reservoir; provided, however, that Travis County will provide NLand Surf Park with the results of any such water quality testing promptly upon receipt.

14. NLand will submit a QAPP (quality assurance project plan) to Travis County within 15 days. The QAPP will describe methods used to ensure the integrity of water sample collection, preservation, and transport. The QAPP will also describe the testing methods and sample collection points for the Lagoon and Reservoir.

15. The Parties waive service of a writ of injunction.

16. A temporary injunction hearing is set for April 27, 2017.


17. This case is set for trial on the merits on October 2, 2017.

18. Austin Park, LLC's deadline to file an answer or other responsive pleading to Travis County's petition is extended to January 6, 2017.

This Order shall be effective until May 1, 2017.

The parties have agreed that there shall be no bond required
ke

SIGNED on October 4, 2016.



JUDGE KARIN CRUMP

KARIN CRUMP

On behalf of Plaintiff Travis County, Texas:

DAVID A. ESCAMILLA
TRAVIS COUNTY ATTORNEY

By: /s/ Ryan P. Fite
Ryan P. Fite
Assistant County Attorney
State Bar No. 24045873
ryan.fite@co.travis.tx.us

P.O. Box 1748
Austin, Texas 78767
512-854-9415
512-854-9316 (fax)

ATTORNEYS FOR TRAVIS COUNTY

On behalf of Austin Park, LLC:

/s/ Matthew Murrell
Matthew Murrell
State Bar No. 24083545
Todd Reed
State Bar No. 00791495
REED & SCARDINO LLP
301 Congress Ave., Suite 1250
Austin, TX 78701
(512) 474-2449
(512) 474-2622 (fax)
mmurrell@reedscardino.com
treed@reedscardino.com

ATTORNEYS FOR AUSTIN PARK, LLC

EXHIBIT A

Microorganisms

Contaminant	MCL (mg/L)
Cryptosporidium	≤ 5.3 Oocysts/100 liters
Giardia lamblia	≤ 5.3 Cysts/100 liters
Legionella	≤ 1.0 Legionella Spp./liter

Testing schedule for microorganisms: Microorganisms shall be tested on the 10th, 20th, and 30th days of the Lagoon's operation and then monthly thereafter.

Inorganic Chemicals

Contaminant	MCL (mg/L)
Antimony	0.006
Arsenic	0.01
Asbestos (fiber > 10 micrometers)	7 million fibers per liter
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium (total)	0.1
Copper	1.3
Cyanide (as free cyanide)	0.2
Fluoride	4
Lead	0.015
Mercury (inorganic)	0.002
Nitrate (measured as Nitrogen)	10
Nitrite (measured as Nitrogen)	1
Selenium	0.05
Thallium	0.002

Testing schedule for inorganic chemicals: Inorganic chemicals shall be tested on the 30th day of the Lagoon's operation and then quarterly thereafter.

Organic Chemicals

Contaminant	MCL (mg/L)
Alachlor	0.002
Atrazine	0.003
Benzene	0.005
Benzo(a)pyrene (PAHs)	0.0002
Carbofuran	0.04
Carbon tetrachloride	0.005
Chlordane	0.002
Chlorobenzene	0.1
2,4-D	0.07

Dalapon	0.2
1,2-Dibromo-3-chloropropane (DBCP)	0.0002
o-Dichlorobenzene	0.6
p-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane	0.005
1,2-Dichloropropane	0.005
Di(2-ethylhexyl) adipate	0.4
Di(2-ethylhexyl) phthalate	0.006
Dinoseb	0.007
Dioxin (2,3,7,8-TCDD)	0.00000003
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylbenzene	0.7
Ethylene dibromide	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Polychlorinated biphenyls (PCBs)	0.0005
Pentachlorophenol	0.001
Picloram	0.5
Simazine	0.004
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Toxaphene	0.003
2,4,5-TP (Silvex)	0.05
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.2
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (total)	10

Testing schedule for organic chemicals: Organic chemicals shall be tested on the 30th day of the Lagoon's operation and then quarterly thereafter.

Radionuclides

Contaminant	MCL
Alpha particles	15 picocuries per Liter (pCi/L)
Beta particles and photon emitters	4 millirems per year
Radium 226 and Radium 228 (combined)	5 pCi/L
Uranium	30 ug/L

Testing schedule for radionuclides: Radionuclides shall be tested annually.