

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 23, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 13MD-009
MAUI

Request that the Board Grant Petition for Contested Case Hearing by KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, for a Contested Case Hearing as to Enforcement Action Against KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures Involving Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, Tax Map Key: (2) 4-8-003:001 and for Authorization to Select and Appoint a Hearing Officer.

At the Board of Land and Natural Resource's meeting of July 12, 2013, the Board approved staff's recommendations as follows:

- 1) Find that KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, violated the provisions of Chapter 171-6, Hawaii Revised Statutes, and Hawaii Administrative Rules 13-221-35, Commercial Activities, by conducting unauthorized commercial activities on unencumbered State land order it to pay a fine of \$1,000 and \$420.00 in administrative costs within thirty (30) days of the date of the Board's action of today's date. The fine and administrative costs shall be paid to the Department of Land and Natural Resources.
- 2) Order that in the event that KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, shall conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, KRS Investments LLC, dba South Pacific Kayakers & Outfitters, and Tiki Team Adventures, shall be fined \$1,000 for each day or part thereof that such activities occur.

A copy of the submittal is attached as Exhibit A. Petitioner orally requested a contested case hearing before the close of the meeting on July 12, 2013. On July 22, 2013, the Department received three petitions for contested cases from attorney Thomas Cole, on behalf of KRS Investments LLC, South Pacific Kayaks and Outfitters and Tiki Team Adventures, pursuant to Hawaii Administrative Rules 13-1-29 and 13-1-31.1. Copies of the petitions are attached as Exhibit B, C and D respectively. After

consultation with the Department of Attorney General, the Department is recommending that the petitions be granted. Given that all three petitioners are, for all intents and purposes, a single entity, staff recommends that all three petitions be consolidated into a single contested case hearing.

RECOMMENDATION: That the Board:

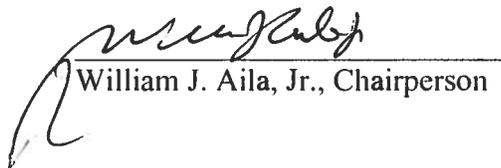
- 1) Grant the petitions and authorize a single contested case consolidating the petitions as to the findings against KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures.
- 2) Authorize appointment of a Hearing Officer to conduct hearings relevant to the petitions as provided by law.
- 3) Delegate the authority for selection of the hearing officer to the Chairperson.

Respectfully submitted,



Ian Hirokawa
Project Development Specialist

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 12, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF#13MD-009
Maui

RESUBMITTAL: Impose a \$1,000.00 Fine and \$420.00 in Administrative Cost Against KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, at TMK: (2) 4-8-003:001.

PURPOSE:

Imposition of fine and administrative costs for the unauthorized commercial use of unencumbered lands by KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures.

LEGAL REFERENCE:

Sections 13-221-35, Commercial Activities, of the Hawaii Administrative Rules, and 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Shoreline area at Olowalu, Lahaina, Maui at Tax Map Key: (2) 4-8-003:001

CURRENT USE STATUS:

State Beach Reserve, currently vacant and unencumbered.

RESPONSIBLE:

Trade Name: South Pacific Kayaks & Outfitters, and Tiki Team Adventures
DCCA Registrant Name: KRS Investments LLC, a Hawaii limited liability company
Owner: Roger Simonot

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
July 12, 2013

BLNR - Issuance of Fine
For Unauthorized Commercial
Activities

July 12, 2013

Address:

Kihei, HI 96753

VIOLATION:

On January 11, 2013 at 7:30 a.m., KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures (South Pacific Kayaks) was observed conducting commercial business operations on the shoreline at Olowalu beach. An instructor was observed providing lessons and a safety briefing to ten clients. At the time, a total of six kayaks were lined up along the shoreline area to the rear of a trailer. The trailer was secured to a gold pickup truck with South Pacific Kayaks and Tiki Team Adventures advertisements displayed on it. Proper signage exists onsite notifying beachgoers that commercial activities are prohibited. Refer to the attached photo report (Exhibit #1).

A previously documented warning and complaint against South Pacific Kayaks is as follows:

Maui DOCARE report number MA-12-060

Officer Joshua Rezendes

Date: 7/17/2011

Contact and warning was issued to South Pacific Kayaks employee on 7/20/2011.

Report attached as Exhibit #2

AGENCY COMMENTS:

A request for comment was solicited from the following agencies:

| Agency | Comments |
|--|------------------------------|
| County of Maui – Dept. of Parks & Rec. | No objections |
| County of Maui – Planning (Zoning) | No objections No comments |
| DLNR – Maui DOCARE | No response |
| DLNR – Maui DOBOR | No objections No comments |

REMARKS:

Staff feels the assessment of a fine is reasonable given South Pacific Kayaks' history of violations. The fine will serve as a deterrent to any future unauthorized activity.

Staff has been working with the County of Maui Parks and Recreation Department in providing information to vendors who are required to attend training classes prior to obtaining a Commercial Ocean Recreational Activity (C.O.R.A) Permit from the County of Maui's Department of Parks and Recreation. The C.O.R.A permit, allows vendors to operate their commercial business from designated park facilities under the jurisdiction of the County of Maui, Department of Parks and Recreation. The Maui District Land Office has been dealing with the problem of these operators who, after obtaining the C.O.R.A permits, are now moving their business operations out of designated county parks and onto adjacent State unencumbered lands. This is in an effort to provide better utilization of the area, due to changes in weather conditions which negatively affect their tour operations, or because of carrying capacity problems at the assigned and permitted park locations.

The Maui District Land Office (MDLO) has to date, received numerous complaints from the public regarding the overcrowding of shoreline areas due to vendors laying out kayaks or surfboards along the beach while awaiting the arrival of clients or during lessons and safety briefings being conducted prior to moving out into the water for tours or surf lessons. The public has for generations utilized specific areas for family outings and recreational activities and are now being forced out of these locations because of the impacts from unauthorized commercial operators.

EXHIBITS:

- Exhibit #1 - Photo report dated 1/11/2013
- Exhibit #2 - Maui DOCARE report # MA-12-060, submitted by Officer Joshua Rezentes. (Warning Issued to Owner Roger Simonot)
- Exhibit #3 - Information provided by Suzanne Dorn, complainant (permitted commercial vendor).

RECOMMENDATION: That the Board:

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BLNR - Issuance of Fine
For Unauthorized Commercial
Activities

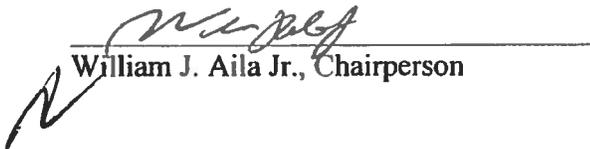
July 12, 2013

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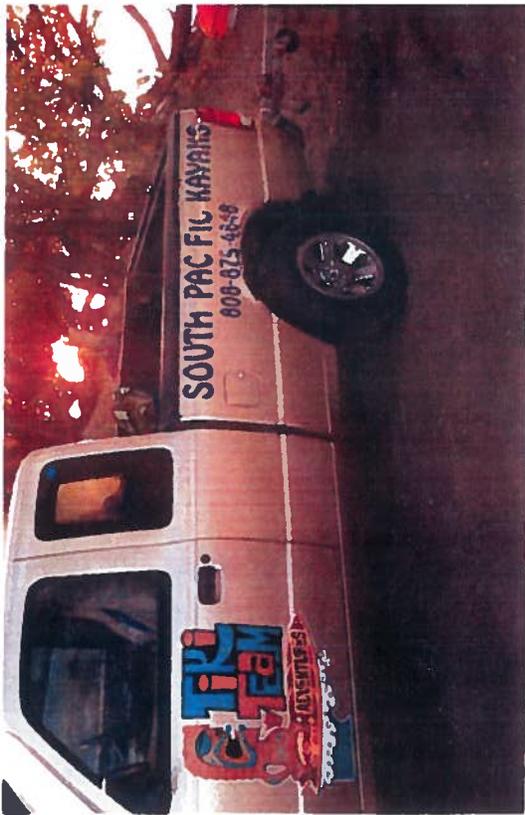
Respectfully Submitted,


Daniel Ornellas, District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila Jr., Chairperson

Photos taken: 1/11/2013



South Pacific Kayaks, Unauthorized Commercial Activities, Olowaiu



Photos depict South Pacific Kayak's personnel utilizing unencumbered State land along the shoreline to conduct commercial activities without authorization or permit

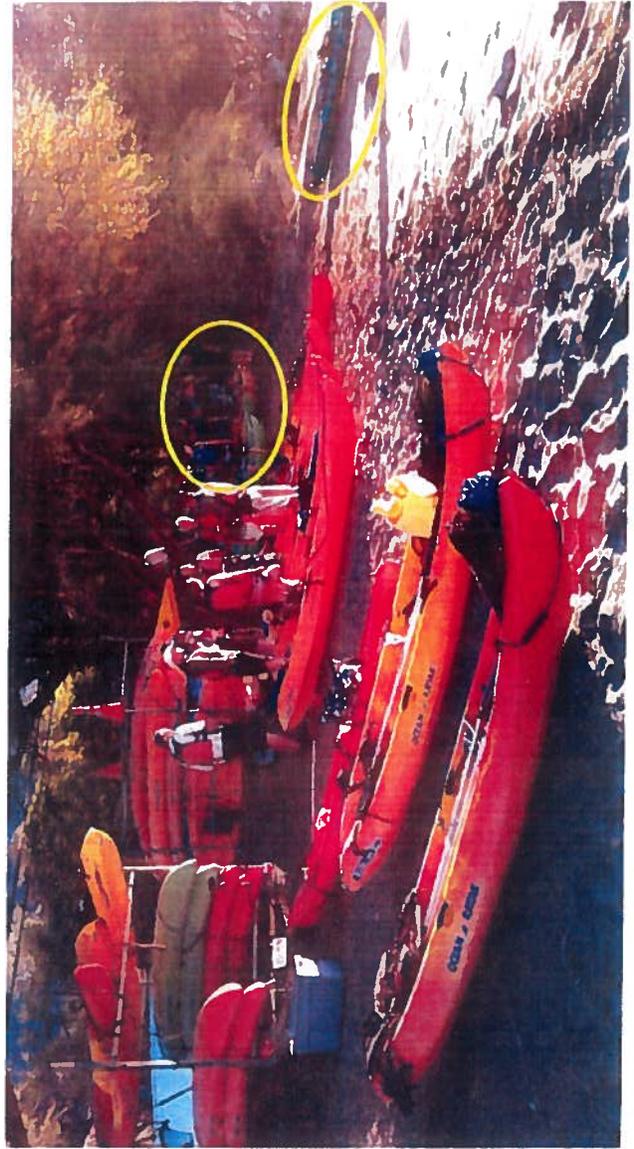


EXHIBIT " 1 "



Olowalu Beach Reserve signs listing prohibited activities which include
No Commercial Activities.

STATE OF HAWAII
INVESTIGATION REPORT

COPY

CONFIDENTIAL 2011 AUG -4 AM 8:35

Trk: (2)4-8-023:001

| | |
|--|---|
| 1. REPORT NUMBER MA-12-060 | |
| 2. INVESTIGATOR REZENTES, Joshua | |
| 3. ISLAND MAUI | 4. DISTRICT OLOWALU |
| 5. COMPLAINANT (Firm Name, if Business) OFC. J. REZENTES | 6. SEX M |
| 7. RACE DNA | 8. AGE DNA |
| 9. D.O.B. DNA | 10. OCCUPATION CREO III |
| 9. ADDRESS | 10. SCHOOL EMPLOYED/SCHOOL ATTENDING DLNR/DOCARE |
| 11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET OLOWALU BEACH RESERVE | 12. DATE/TIME/DAY OCCURRED 7/17/11 0730 HOURS/SUN |
| 13. DATE/TIME REPORTED 7/17/11 0735HOURS | 14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES OLOWALU BEACH RESERVE |
| 15. HOW REPORTED PHONE | |

| | | | | | | |
|-----------------------------|------------|----------|-----------|--------------|-----------------|--------------------------|
| 16. VEHICLE INVOLVED | Year DNA | Make DNA | Model DNA | Color(s) DNA | License No. DNA | I.D. Characteristics DNA |
| 17. BOAT INVOLVED | Length DNA | Make DNA | Model DNA | Color(s) DNA | Name DNA | HA No. DNA |
| 18. REGISTERED OWNER DNA | | | | | | I.D. Characteristics DNA |
| Address DNA | | | | | | Res. Phone DNA |

CODE: W = Witness S = Suspect (Fill in Composite Description) R = Reporting Person O = Other

| | | | | | | |
|-------------------------------------|-----|-----|------|---------|------------|------------|
| 19. NAME VICTORIA KALUNA-PALAFIX | Age | Sex | Code | Address | Res. Phone | Bus. Phone |
| PETER HAMILTON | 31 | M | O | | | |
| SOUTH PACIFIC KAYAKS | | | S | | | SAME |

| | | | | | | | | | | |
|---------|-----------------------|------|-----|----|-------|------|------|---------|------------|------------|
| 20. SEX | Composite Description | Race | Age | WL | Build | Hght | Eyes | Complex | Birthdate: | H# or SSN: |
|---------|-----------------------|------|-----|----|-------|------|------|---------|------------|------------|

21. INVESTIGATION: 1. Insert a synopsis of the crime or incident. 2. Summarize details of the crime or incident. 3. Denote persons from whom statements taken and who took them. 4. Identify additional suspects and witnesses. 5. Identify additional investigators. 6. Use opposite side for continuation of report, if necessary.

Synopsis
On the above mentioned date and time I was assigned by Officer R. DECAMBRA to investigate a land management case at Olowalu Beach Reserve. Contact was made with reporting person Victoria KALUNA-PALAFIX via phone who related that she had observed numerous kayaks on the beach. I conducted checks at the mentioned location where I did not observe any kayaks on the beach or kayak tour guides only their vehicles. Two trucks were marked with "South Pacific Kayaks" while two other vehicles had trailers attached but no company label. On 7/20/11 I conducted a follow up check where I made contact with Peter HAMILTON who was a kayak tour guide for "South Pacific Kayaks." I explained to HAMILTON that I had received a complaint regarding kayaks on the beach a few days prior and that although I did not observe any today, two trucks from "South Pacific Kayaks" were observed when the violation was occurring. I further explained to him that it was against the law for any company to lay there kayaks on the beach. HAMILTON related that he understood and that he would apprise his co-workers and other companies about this. Request report be forwarded to Land Division for review.

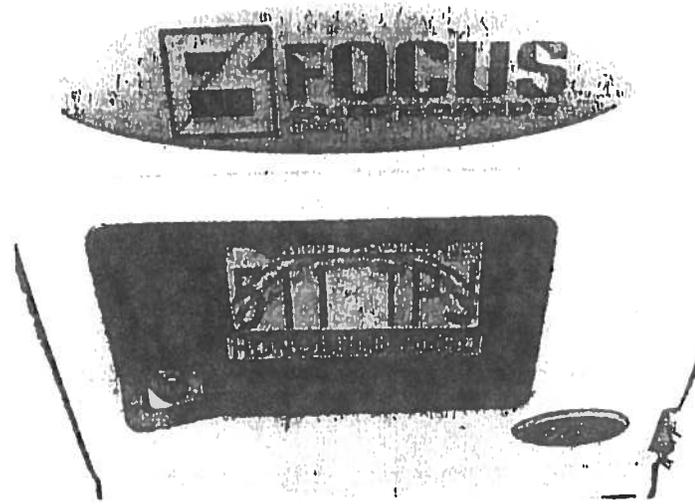
ASSIGNMENT:
On the above mentioned date and time I was assigned by Officer R. DECAMBRA to investigate a land management case at Olowalu Beach Reserve.

REPORTING PERSON CONTACTED:
At approximately 0805 hours contact was made with reporting person Victoria KALUNA-PALAFIX via phone who related that at approximately 0730 hours while traversing pass Olowalu Beach Reserve she had observed numerous kayaks laid out on the beach and river mouth KALUNA-PALAFIX then stated that she returned to Olowalu Beach Reserve where she observed over a dozen kayaks ranging in color on the beach and took photos with her phone. KALUNA-PALAFIX further related that she was not sure what kayaks belonged to what company or even the names of the kayak companies. KALUNA-PALAFIX also related that she would send me the photos via e-mail.

CHECKS CONDUCTED:
At approximately 0830 hours, I conducted checks at the mentioned location where I did not observe any kayaks on the beach or any kayak tour guides, only their vehicles. Two trucks were marked with "South Pacific Kayaks" while two other vehicles had trailers attached but no company label. Checks with Maui Police Dispatch revealed that the vehicles belonged to Paul Noble with and address of Lahaina Hi 96767 (511-TPJ) and Derrek Quale Kula Hi 96790 (736-MDE). I waited for approximately one hour for the kayak tours to return however, they did not.

| | | | | |
|---|------------------|---------------------------------|---|------------------|
| 22. REPORT WRITTEN BY REZENTES, Joshua | Badge No. 174 | Date/Time 7/27/11 @ 1105 Hrs | 23. SUPERVISOR APPROVING RODRIGUES, Howard | Badge No. 248 |
| 24. DISPOSITION <input type="checkbox"/> Unfounded <input type="checkbox"/> Citation/No. <input type="checkbox"/> Arrested/Prosecuted <input type="checkbox"/> Arrested/No Prosecution <input type="checkbox"/> Adult <input type="checkbox"/> Arrested/Prosecuted <input type="checkbox"/> Juvenile <input type="checkbox"/> Other/No Arrest | | | | |
| 25. Date/Time Reproduced | 26. Distribution | 27. Connecting Report No. | | |

PHOTO #3 DEPICTS LICENSE PLATE OF VAN FROM UNKNOWN KAYAK COMPANY. (REGISTERED OWNER IS PAUL NOBLE)



PHOTOS #4 AND #5 VEHICLES LABELED WITH "SOUTH PACIFIC

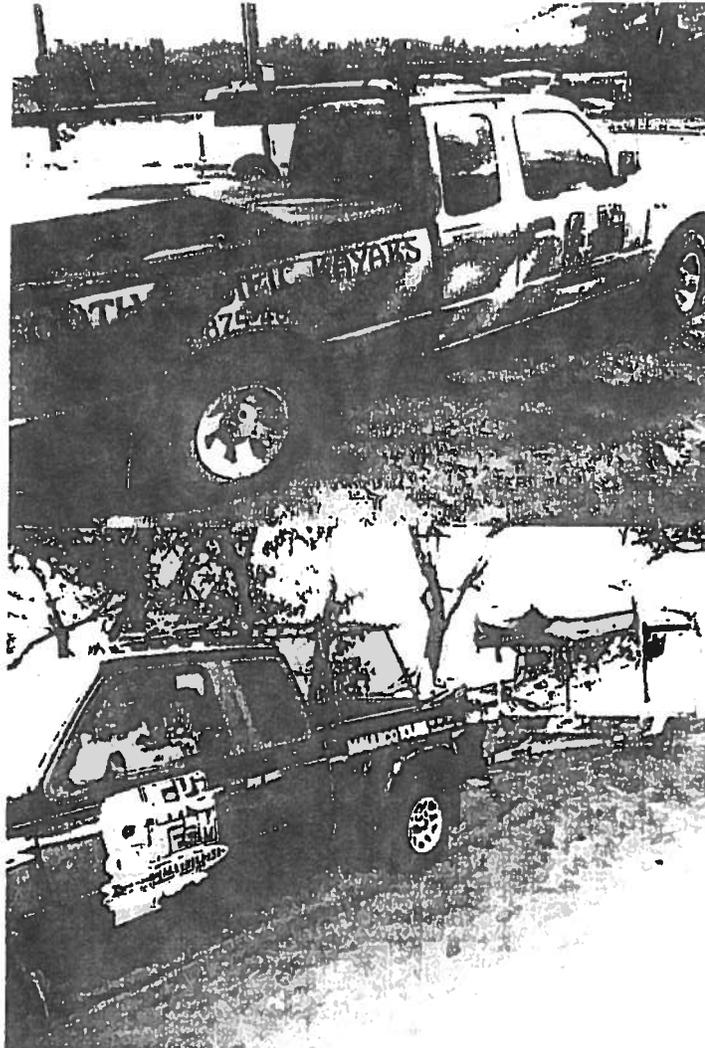


PHOTO #5 AND #6 DEPICTS UNKNOWN KAYAK COMPANY WITH TRAILER DETACHED (REGISTERED OWNER IS DERREK QUALE)



December 8, 2012

**ILLEGAL SURF, SUP, KAYAK, SCHOOL OPERATING ON STATE BEACHES,
COUNTY BEACHES AND UNENCUMBERED LAND**

Company Name: **SOUTH PACIFIC KAYAKS AKA TIKI TOURS**

Name of Owner: Roger Simonet

Phone: 1-800-776-2326

website : www.southpacifickayaks.com

www.gokayakingmaui.com

STAFF: has a staff of about 20 guides operating island wide.

teaches surfing, Stand Up Paddleboarding, Kayaking, illegally island wide

**OPERATING AT OLOWALU, MAKENA LANDING,
HONOLUA BAY, KALAMA PARK, FLEMING BEACH,
AHIHI BAY**

Olowalu Outing

Great early morning adventure exploring the Olowalu Beach Reserve area of west Maui. Join a kayaking tour of the Olowalu area which is home to one of the most dynamic reefs on Maui. Lots of sea life and this one is HUGE. A nice paddle of about 2.5 miles from a great sandy beach and along the shores of the West Maui Mountains. Good for families and those looking for a snorkeling outing that's just long enough. Enjoy one longer snorkeling stop or two short snorkeling stops in some of the most amazing reef eco systems on Maui. Bring a camera!

Honolua Hula Expedition

While we might not actually hula, you'll want to because of how excited you'll be to see some of the most exiting coastlines on Maui. A great combination of rugged shoreline, sandy beaches and amazing waters are what to expect on this tour. About 4 miles of paddling from DT Fleming beach park and into the Honolua Bay Reserve. This reserve is home to some beautiful snorkeling and exceptional scenery all along the way. Turtles and dolphins are not uncommon here, and perhaps you'll even get a sneak peak at the infamous three fin turtle

Turtle Reef Tango

Come and explore the beautiful Makena Bay, home of the green sea turtle. This protected area offers the turtles a very comfortable area to enjoy themselves, hence Turtle Town! We paddle about 2.5 miles on this kayaking trip and stop for some snorkeling with the local turtles and reef life. Paddle with the famous Haleakala as your backdrop, Molokini in the distance, and the Ahihi Kinau marine reserve just around the corner. Always a great kayaking trip and one the most consistently calm areas. Join us in Makena for a memorable experience and see the turtles.

Kihei Makena Cruise

Starting in Kihei at Kalama Park and ending at Makena Landing, we travel along the coastline where we will see surfers, boats, and some really nice beach houses (you know... the ones we can't afford!), and the five star resorts. A really cool way to explore the South Maui coast and you won't be doubling back seeing things twice. With many snorkeling opportunities, and places to stop for lunch, this kayaking expedition is one of a kind. This one way trip includes lunch.



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED
JUL 22 2013
DLNR/APO

| OFFICIAL USE ONLY | |
|------------------------------|-----------------|
| Case No. | Date Received |
| Board Action Date / Item No. | Division/Office |

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board action date to:
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
2013 JUL 26 AM 10:09
RECEIVED
LAND DIVISION

| A. PETITIONER | | |
|---|------------------------------------|------------------------------|
| (If there are multiple petitioners, use one form for each.) | | |
| 1. Name KRS Investments, LLC | 2. Contact Person Roger Simonot | |
| 3. Address | 4. City Kihei | 5. State and ZIP HI 96753 |
| 6. Email | 7. Phone | 8. Fax 808-270-2699 |

| B. ATTORNEY (if represented) | | |
|-----------------------------------|---|-------------------------------|
| 9. Attorney Name Thomas R Cole | 10. Firm Name Thomas R. Cole Attorney at law | |
| 11. Address | 12. City Wailuku | 13. State and ZIP HI 96793 |
| 14. Email | 15. Phone | 16. Fax (808) 244-5460 |

C. SUBJECT MATTER

17. Board Action Being Contested

Impose fine for alleged unauthorized commercial activities on state unencumbered land, and continued fines.

18. Board Action Date

July 12, 2013

19. Item No.

PSF#13MD-009

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

Petitioner is the entity that the complaint was filed against and which was assessed the findings. The Petitioner has standing as the accused in this action. KRS Investments LLC does business as Pacific Kayaks & Outfitters and Tiki Team Adventures

21. Any Disagreement Petitioner May Have with an Application before the Board

The Petitioner does not agree with the findings that commercial activity occurred on State unencumbered lands nor has Petitioner violated any of the rules and regulations

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

The Petitioner is seeking a dismissal of the citation and dismissal of the Board's findings of violations and fines.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

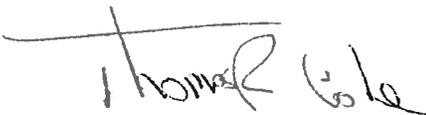
The Petitioner is the party which has been charged with a violation of a rule that is vague and ambiguous. Rules must be clear so that enforcement and the public can easily determine what is allowed and what is not allowed.

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

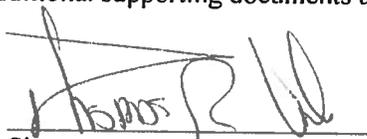
The Petitioner is the aggrieved party charged with the violation. The Petitioner is a proper party under HAR Section 13-1-31.

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.



Petitioner or Representative (Print Name)



Signature

7-19-2013

Date

RECEIVED

JUL 22 2013

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STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

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The Petitioner is the aggrieved party charged with the violation. The Petitioner is a proper party under HAR Section 13-1-31.

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Thomas R Cole

Petitioner or Representative (Print Name)

Thomas R Cole

Signature

7-19-2013

Date



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

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PSF#13MD-009

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

Petitioner is the entity that the complaint was filed against and which was assessed the findings. The Petitioner has standing as the accused in this action. KRS Investments LLC does business as Pacific Kayaks & Outfitters and Tiki Team Adventures

21. Any Disagreement Petitioner May Have with an Application before the Board

The Petitioner does not agree with the findings that commercial activity occurred on State unencumbered lands nor has Petitioner violated any of the rules and regulations

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

The Petitioner is seeking a dismissal of the citation and dismissal of the Board's findings of violations and fines.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

The Petitioner is the party which has been charged with a violation of a rule that is vague and ambiguous. Rules must be clear so that enforcement and the public can easily determine what is allowed and what is not allowed.

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

The Petitioner is the aggrieved party charged with the violation. The Petitioner is a proper party under HAR Section 13-1-31.

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Thomas R. Wole
Petitioner or Representative (Print Name)

[Signature]
Signature

7-19-2013
Date