

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813  
January 10, 2014

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

O'ahu

SUBJECT: REQUEST THE ISSUANCE OF ADMINISTRATIVE AND CIVIL PENALTIES OF \$2,500 PURSUANT TO CHAPTER 184, HAWAII REVISED STATUTES TO ALEX AQUINO FOR VIOLATION OF CHAPTER 13-146 HAWAII ADMINISTRATIVE RULES AT KEALAKEKUA BAY STATE HISTORICAL PARK, SOUTH KONA, HAWAII

**LEGAL REFERENCE:**

Chapters 13-146 Hawaii Administrative Rules and Chapter 184 Hawaii Revised Statutes.

**LOCATION:**

Portion of Government lands at the Kealakekua Bay State Historical Park, Kealakekua (South Kona), Hawai'i, identified by Tax Map Key: (3) 8-2-04, as shown on the attached tax map key included in Exhibit 1.

**LEGAL AUTHORITY:**

§13-146-68 HAR. Commercial activities. No person shall engage in commercial activities of any kind, without a written permit from the board or its authorized representative. [Eff 12/9/02] (Auth: HRS §184-5) (Imp: HRS §184-5)

§184-5.5 HRS. General administrative penalties. (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation may set, charge, and collect administrative fines to recover administrative fees and costs as documented by receipts or affidavits, including attorney's fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorney's fees and costs; or payment for damages or for the cost to correct damages resulting from a violation of this chapter, any rule adopted, or permit issued thereunder.

(b) The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$10,000.

(c) In addition, a fine of up to \$5,000 may be levied for each:

**REMARKS:**

Kealakekua Bay State Historical Park (KBSHP) is arguably one of the most historic, culturally sensitive and scenic locations in the State of Hawaii – due to both a significant cultural history and its quality of ocean waters –hence its designation as a Marine Life Conservation District. Because of this, KBSHP is also one of Hawaii’s important visitor destinations and is nestled within the existing rural community of Napoopoo Village.

DLNR management of KBSHP has been the subject of decades and several Administrations’ attempts to coordinate multiple DLNR Divisions effort to solve what became a pernicious management problem associated with the proliferation of kayak rentals and use in this historic bay. There is voracious visitor interest to kayak across the calm waters of the Bay from the historic Napoopoo wharf to visit the famous Captain Cook Monument and then swim and snorkel in the clear waters teeming with reef fish and marine mammals. This constant and global visitation has made the rental of kayaks an alluring business enterprise and has attracted a large variety individuals and businesses who rent kayaks – which was occurring and focused on deployment from the historic Napoopoo wharf owned and managed by DLNR. Conservative estimates shared with staff by nearby residents indicate that several thousands of dollars a year of cash only transactions were occurring at this location - thus creating a very lucrative business opportunity. This readily available cash stimulated opportunities for a variety of other illicit sales and services, which had become so prolific that the overall quality of the historic wharf and the user’s experience deteriorated beyond acceptable limits.

As a result of this critical deterioration of quality and associated social impact to visitors and residents, and a proliferation of human waste at the historic and culturally sensitive Kaawaloa Flat across the Bay, there were several intra-departmental meetings seeking resolution in 2012. One of the significant outcomes of these meetings was that the water areas of the Bay and the historic wharf was transferred from the jurisdiction of the Division of Boating and Ocean Recreation (DOBOR) to the Division of State Parks (DSP) via a Board approved Set Aside and Governor’s Executive Order 4424 signed in December of 2012. This action consolidated all regulatory authority of KBSHP under DSP, enabling the enforcement of one set of Administrative Rules. In January of 2013 – the Department utilized this regulatory authority and subsequently established a moratorium on the use of vessels in the Bay. Landings at Kaawaloa Flat were prohibited and both vehicle parking and launching of kayaks at the historic Napoopoo wharf were no longer allowed without a permit.

A key management priority was to regulate all vessels entering the (now DSP managed) Bay via Special Use Permits (SUP). The conditions of the SUP prescribe what is allowed and not allowed to all commercial and non-commercial vessels and other crafts that use the water of the Bay.

Only the 3 previously Board authorized commercial companies with Revocable Permits were then allowed to operate the same level of kayak tours which included authorization to both park and launch from the historic Napoopoo wharf and paddle with guided patrons across the Bay to then land at Kaawaloa Flats. Permit conditions include that the guides manage and remove all

human waste and not drag kayaks across the rocks – among many other time, size and safety conditions. A new condition to the existing RP's was that the companies, guided by the DSP staff archeologist – perform stewardship at Kaawaloa Flat on a quarterly basis – removing rubbish, debris, and human waste and cutting back vegetation that is detrimental to the archaeological sites.

**The Primary Departmental regulatory objectives are to:**

- a. Stop illicit vending and renting of equipment at the historic Napoopoo Wharf.
- b. Stop the proliferation of kayak landings at Kaawaloa Flat in order to eliminate the deposition of human waste in sensitive archeological sites (there are no comfort stations at Kaawaloa Flat).
- c. Reduce the impact to near shore coral and water quality due to the proliferation of kayaks being randomly tied to trees and rocks or dragged along rocks near the shore as they landed.
- d. Improve the protection of marine mammal species.
- e. Improve public water safety in the Bay.
- f. Document all vessel use for potential future applications to establish a vessel capacity as warranted.

In consultation with a Deputy Attorney General, it was determined that the SUP would be the same for all vessels, currently not subject to a limiting capacity, be issued for only 6 months at a time and contain the following language:

1. No launching or landing of vessels from the wharf at Napoopoo landing.
2. No landing or transporting of people to land or to traverse any of the land at Kaawaloa Flat.
3. No launching or deployment of any auxiliary vessels from the permitted vessel. Swimmers are allowed in the water, but not to access Kaawaloa Flat.
4. Motorized vessels are to operate at a "no wake" speed.
5. There shall be no damage to any live coral, or tampering or interfering with other marine life and mammals. Maintain all legal distances from marine mammals.
6. If an emergency landing is required on land within KBSHP, please notify the DLNR Hawaii State Park Office @ 808-961-9544 within 24 hours of the landing and report the nature of the emergency and the need to land.
7. These conditions may be subject to change due to resource management.
8. Violation of any of these permit conditions may cause the revocation of the permit.
9. The permittee is to abide by all County, State and Federal laws and regulations. Any violation of these laws and regulations will result in immediate suspension of this permit.

The following is the data generated by the issuance of the SUP's up to December of 2013:

**Breakdown by category of permits issued:**

|              | COMMERCIAL | NON-COMMERCIAL | COMBINED  |
|--------------|------------|----------------|-----------|
| Boat         | 50         | 22             | 72        |
| Canoe        | 3          | 13             | 16        |
| Inflatable   | 21         | 2              | 23        |
| Kayak        | 14         | 201            | 215       |
| Paddle board | 5          | 116            | 121       |
|              | <hr/> 93   | <hr/> 354      | <hr/> 447 |

**Total number of permits: 447 (Total number of vessels: 617)**

DSP staff has recently reported that the quality of the landscape at Kaawaloa Flat has improved dramatically based on both general compliance to the SUP conditions and stewardship and that illicit vending and associated traffic has been eliminated from Napoopoo Wharf.

However, over the ensuing year a new regulatory problem developed where some of the kayak permittees that do not have a storefront and have kayaks stored on top of personal vehicles or at nearby private land, have shifted the soliciting for patrons at KBSHP into the adjacent and small Napoopoo parking area directly in front of the historic Hikiau heiau. Patrons and tours are then deployed and launched from a mix of private, County, and possibly State land at the nearby Manini Beach. Informal staff observations indicated that the illegal solicitation in the park was at times very aggressive where the various solicitors occasionally engaged in loud, angry and distasteful behavior debating as to who was to make the sale. The new kayak deployment at Manini has now created substantial parking and crowding problems for residents in this new area and DSP has been in consultation with Hawaii County officials to determine collaborative methods to remedy the situation given respective jurisdictional issues and restraints.

The SUP's have strict conditions on use and are not commercial permits for business operations – only for transiting the water of the bay. Soliciting for patrons constitutes a violation of: §13-146-68 Commercial activities. No person shall engage in commercial activities of any kind, without a written permit from the Board or its authorized representative. [Eff 12/9/02] (Auth: HRS §184-5) (Imp: HRS §184-5)

As stated in the SUP the Permittee is to “abide by all County, State and Federal laws and regulations. Any violation of these laws and regulations will result in immediate suspension of this permit.”

The Division of Conservation and Resources Enforcement (DOCARE) documented solicitation by one of the permittees at KBSHP at Napoopoo and the attached DOCARE report is the subject of this request for civil penalties.

**DISCUSSION: ENFORCEMENT AND DOCUMENTATION HISTORY**

In order to investigate and document alleged illegal commercial activities at KBSHP, DOCARE planned and executed an undercover operation.

Exhibit 1: DOCARE ARREST REPORT (redacted version)

Exhibit 2: DSP SPECIAL USE PERMITS ISSUED TO ALEX AQUINO

On November 21, 2013, Officer Matthew Gutierrez ("Gutierrez") of DOCARE was sent to KBSHP. At 9:30 a.m., Gutierrez arrives at the Pu'u Honua Road lookout area within the Park, dressed in plain clothes. Shortly thereafter, Gutierrez was approached by Alexander Aquino ("Aquino") and Nathan Koli ("Koli"). Koli initiated a conversation with Gutierrez, inquiring about Gutierrez's potential interest in renting kayaks. After going back and forth about the logistics of renting kayaks to use in the Bay, Koli verbally provided Gutierrez with Aquino's contact information as "Big Island Canoes 808-854-9764." This information was clearly printed on a door of a vehicle (license plate number "GPR 087") that was parked next to them. Aquino then retrieved a white paper from that same vehicle, containing product pricing and contact information, and handed it to Gutierrez. Aquino explained to Gutierrez that "Big Island Canoes" is his business and "Bay Side Adventures" is his partner Anela's business (Ms. Anela Bonafede dba: Bay Side Adventures, holds SUP's KBSHP 208, 209, 210) Both of these business names were printed on the white paper.

Aquino further explained to Gutierrez that he had single, double, and triple kayaks. Aquino stated that, "doubles are \$60.00 a day and triples are \$80.00 a day, but I will give it to you for \$60.00." Gutierrez replied with, "okay, one three passenger kayak and just two masks and snorkels." Aquino responded by saying, "okay".

Koli told Aquino, "I'll go grab it, and I am gonna get half of this guy." Aquino then told Gutierrez that when his family gets there and are ready to go, they can follow Aquino down the road to "grandma's house" and launch from there. Gutierrez asked Aquino when he would like payment. Aquino replied with, "after is okay." Aquino told Gutierrez that will be \$60.00 for the kayak, and \$10.00 for each mask and snorkel. Gutierrez informed Aquino that he would need to call his wife to confirm that it's a deal.

Gutierrez stepped away and called Officer Dale Vioria to report the status of the operation. Aquino was subsequently arrested for violation of HAR §13-146-68, Commercial Activities.

### **RECOMMENDATION:**

There have been years of allegedly illegal and illicit sales and kayak operations adding to the subsequent degradation to this significant historic location and diminished quality of user experience associated with the unpermitted solicitation. DSP has determined that it is critical to demonstrate the commitment to stopping this illicit activity in a historic park to other current operators allegedly conducting the solicitation. As such, DSP is requesting that the maximum amount for a civil fine in §184-5.5 for first offense and the ancillary administrative costs for the DOCARE operation (33 hours of DOCARE officer salary) be applied to this violation.

Recommendation that the Board:

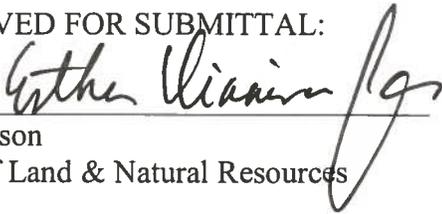
1. Find that Mr. Alex Aquino has violated Chapter 13 HAR, Section 13 as stated in the attached DOCARE report and labeled as Exhibit 1.
2. Authorize an administrative fine of \$2,500 and associated administrative costs to be assessed against Mr. Alex Aquino pursuant to Chapter 184-5.5 Hawaii Revised Statutes.

Respectfully Submitted,



Administrator

APPROVED FOR SUBMITTAL:



Chairperson  
Board of Land & Natural Resources

# EXHIBIT

1

Dept. DLNR  
Div. DOCARE

INVESTIGATION REPORT

KONA **DEC 04 2013** ST. PARKS  
HILO **DEC 04 2013** MOTOR  
KAMUELA SECUTOR **12-4-13**  
HONOLULU  
AQUATICS  
DOFAW  
OCUL & BLAD  
HAWAII

1. REPORT NUMBER  
HA 14-0249  
2. INVESTIGATOR  
OPCR. D. VILORIA #244  
4. DISTRICT  
W. Hawaii

CLASSIFICATION  
STATE PARKS: Prohibited Activities/Coastal Activities

6. COMPLAINT (From Name, if Business)  
DLNR/DOCARE

8. ADDRESS  
PO Box 310 Capt Cook HI 96704

11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET  
Hwy 160

12. DATE/TIME/DAY OCCURRED  
11-21-2013/1000/THURS

13. DATE/TIME REPORTED  
11-21-2013/1000

14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES  
Parking Lot of Kealahou Bay Historical S/P

15. HOW REPORTED  
On View

16. VEHICLE INVOLVED  Year Make Model Color(s) License No. LD. Characteristics

17. BOAT INVOLVED  Length Make Model Color(s) Name HA No. LD. Characteristics

18. REGISTERED OWNER Address Res. Phone

COOL: W = Witness S = Suspect (Fill in Composite Description) R = Reporting Person

| 19. NAME         | Age | Sex | Color | Address    | Res. Phone | Bus. Phone |
|------------------|-----|-----|-------|------------|------------|------------|
| Alexander AQUINO | 39  | M   | S     | [REDACTED] | [REDACTED] | [REDACTED] |
| Nathan KOLII     | 27  | M   | S     | [REDACTED] | [REDACTED] | [REDACTED] |

| 20. SEX Composite Description Race | Age | Wt. | Build | Hair | Eyes | Complex. | Clothes/L.D. Characteristics |
|------------------------------------|-----|-----|-------|------|------|----------|------------------------------|
| Alexander AQUINO                   | 39  | 240 | Med   | BRN  | BRN  | Dark     | White T-shirt/Black Shorts   |
| Nathan KOLII                       | 27  | 215 | Med   | BLK  | BRN  | Tan      | Black Shorts/Grey T-Shirt    |

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.

Synopses

\*\*\*\*\*REFER TO SUPPLEMENTAL REPORT FOR FULL INFORMATION\*\*\*\*\*

HPD RPT# C13031303

22. REPORT MADE BY: *D. Viloria* Badge No. 244 Date/Time 11-21-2013/1230 SUPERVISOR APPROVAL: *[Signature]* B. Kamaiku B. Kamaiku

24. DISPOSITION: ( ) Unfounded ( ) Citation/No. Adult ( ) Arrested/Prosecuted Juvenile ( ) Other/No Arrest

25. Date/Time Reproduced 26. DISPOSITION 27. Connecting Report No.

STATE OF HAWAII  
PO BOX 310  
CAPT COOK HI 96704

11-21-2013

49  
HA 14-0254  
KN  
COMMERCIAL ACTIVITIES

PAGE 1 OF 3 PAGES

**INFORMATION**

11-21-2013 at approximately 0930 hrs we initiated an undercover operation where DOCARE sent in an undercover officer at Kealakekua Bay Historical State Park (S/P). After receiving multiple complaints of unpermitted solicitation of commercial activities, DOCARE officers established a operations plan to address the problem.

At 0930 hrs Ofcr M. GUTIERREZ was inserted in to the area dressed in plain clothes acting like a tourist visiting the area. During a short time in the area he was approached by two males who offered to rent him kayaks and snorkling gear. Ofcr GUTIERREZ then contacted DOACRE Ofcrs standing by in close proximity to the park. Ofcrs then responded and arrested Alex AQUINO and Nathan KOLII for conducting unpermitted "Commercial Activity" within the State Park after being pointed out by Ofcr Gutierrez as the soliciting individuals.

Please refer to Ofcr GUTIERREZ's supplemental reportr for his statement on what occurred during the solicitation by the defendants and his observations.

**SCENE**

The scene in this case is located at the of Pu'u honua Rd at the look out area that over looks Kealakekua Bay. This is located within Kealakekua Bay Historical State Park. Ofcr GUTIERREZ stated that the solicitation occurred on the cement area near the stone wall.

**DEFENDANTS ARRESTED**

Defendants arrested in this case are identified as:

Alex AQUINO, M-39

[REDACTED]

[REDACTED]

[REDACTED]

Capt Cook, HI 96704

[REDACTED]

PO Box 754

Capt Cook, HI 96704

Self-Employed

STATE OF HAWAII  
PO BOX 310  
CAPT COOK HI 96704

11-21-2013

JA  
HA 14-028  
KN  
COMMERCIAL ACTIVITIES

PAGE 2 OF 3 PAGES

Nathan KOLII, M-27  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Capt Cook, HI 96704  
[REDACTED]  
Unemployed

**VIOLATION**

The defendants in this case were arrested for the offense of 13-146-68 HAR, Commercial Activities. Please refer to the attach section for full information.

**PHOTOS**

Photos were taken by Ofcr BOTELHO, please refer to the attached photographic record for full information.

**DEFENDANTS TRANSPORTED/PROCESSED**

The defendants were transported from the scene by myself and Supervisor KAMAKAU to the Kealakekehe Police Station for processing.

**DEFENDANTS RELEASED/COURT DATE**

After being processed both defendants were released ROR and given a court date to appear in Kona District Court on 01-06-2014 at 1300 hrs.

**DISPOSITION**

In view of the above, this case has been closed ARRESTED and CHARGED.

CLOSED: ARRESTED AND CHARGED

STATE OF HAWAII  
PO BOX 310  
CAPT COOK HI 96704

11-21-2013

HA 14-02<sup>49</sup>  
KN  
COMMERCIAL ACTIVITIES

PAGE 3 OF 3 PAGES

APPROVED:

  
OFFICER Dale VILORIA #244

  
L KAMAKAU #5

CREO III KN  
11-25-2013 1115 HRS

State of Hawaii (DLNR)  
PO Box 310  
Captain Cook HI, 96750

11-21-2013  
OFCR. M. GUTIERREZ

HA 14-0249  
State Parks  
Prohibited activities/ Commercial activities

Page 1 of 2 pages

### ASSIGNMENT

On November 21,2013 at 0930hrs, I was assigned to work undercover at Kealakekua Bay Historical State Park to investigate unpermitted commercial activity.

### OBSERVATION #1

I arrived at Kealakekua Bay Historical State Park at approximately 0930hrs. As I made my way to the North end of the road toward the lookout area I observed multiple people being escorted toward the south end of the street carrying snorkel gear as if preparing to go on a kayak tour. On the North West corner there were two men sitting on the rock wall. I recognized one of the men as Alexander AQUINO one of the responsible parties in the complaints received by officers. I approached the area where they were sitting for a better observation.

### SUSPECTS CONTACTED

At approximately 0938 hrs as I was looking out across the bay I was asked by a man sitting on the wall later identified as Nathan KOLII, "If I knew where I was." I then asked if that was the Captain Cook Monument and pointed across the bay. KOLII replied "Yes it is and out there is the best snorkeling in the whole state of Hawaii." I then said that looks like it is a long way over there then KOLII said "Don't worry we have boats to get you there." KOLII went on to say they have everything I needed to get there as well as snorkel gear I needed to experience the Captain Cook Monument. At this time I referred to my Big Island 101 Things to do magazine and asked if he was talking about Aloha Kayak Company?. KOLII said "No, they are way up there but we are down here." KOLII pointed out a group of Kayaks paddling out towards the monument and said "Aloha Kayak Company is like that and it cost more money and you have a time limit." "With us you go by yourself and you can stay all day." AQUINO asked me who I was with and I stated I was dropped off down here to check it out while my wife and son went back up for coffee and to use the restroom. AQUINO asked how old my child was and said "kids go all the time it will be ok." KOLII told me if I was interested I can contact AQUINO at the number on the side of the car parked next to them that read "Big Island Canoes 808-854-9764" and he can set me up for tomorrow. AQUINO got up and went into his vehicle and returned with a white paper which was his business flyer with prices and contact information. He pointed to the top where it reads "Bay Side Adventures" and said "that is my partner Anela and Big Island Canoes is me." AQUINO explained to me that they also do night manta ray kayak tours in front of the Sheraton Hotel if I was interested in doing that also. I asked if it would be possible to get set up today? I was hoping on making a day out of coming down here today. AQUINO said yes what will you need? I said I have my wife and one child. He said I have singles, doubles, and triples. He told me doubles are \$60.00 a day and triples are \$80.00 a day but I will give it to you for \$60.00. I said "Ok one three passenger Kayak and just two masks and snorkels". He said ok as KOLII said to Alex "I'll go grab it and I am gonna get half of this guy." I asked AQUINO if we launch from this location and he told me that when my family gets there and we are all ready, we can follow him down the road to grandma's house and push you off from there.

State of Hawaii (DLNR)  
PO Box 310  
Captain Cook HI, 96750

11-21-2013  
OFCR. M. GUTIERREZ  
Prohibited activities/ Commercial activities

HA 14-0249  
State Parks

Page 2 of 2 pages

I asked AQUINO how much money I will need and he stated he takes cash or credit card. I asked Alex if he would like the payment before or after I am done which he said "After is ok." He told me \$60.00 for the Kayak and \$10.00 for each mask and snorkel. At this time i said ok let me call my wife to see if she was ok with the deal.

**CONTACT INITIATED WITH OPS COMMANDER**

At approximately 0950hrs I stepped away and made contact with the Ops coordinator Dale VILORIA via telephone and informed him of the transaction that was agreed on.

**OBSERVATION #2**

At approximately 0953hrs while returning from calling VILORIA, a few other men were standing with AQUINO and KOLII. As I made my way toward them an older white male rode up on a bicycle and stated "Hey they get something going on down here today I saw Lino and the old man coming down the road." All the men became nervous and asking each other if they had any kayaks out in plain view. Alex said he has none out they are all inside and locked up. One of the men later Identified as Von RINGSTROM said "I have a couple out and that they are probably gonna take them so I am going to film this." At this time I made contact with Officer VILORIA and informed him of what I heard and that our presents is known.

**EVIDENCE RECOVERED**

The evidence was recovered by this Officer. One small white paper advertisement with company names and contact information. For further information refer to master report and the evidence and property receipt submitted by this Officer.

**DISPOSTION**

In view of the above information this officer recommends this supplemental be routed to Officer Dale VILORIA for his deposition.

INV. CONTINUING

APPROVED:

  
Lino KAMAKAU, Supervisor, W.Hawaii

  
OFCR. Matt GUTIERREZ #122  
CREO II WH  
11-22-2013 1100 HRS

|  |  |   |                               |   |                                     |                          |                       |
|--|--|---|-------------------------------|---|-------------------------------------|--------------------------|-----------------------|
| <b>STATE OF HAWAII<br/>OBTS/CCH ARREST REPORT</b>  |  | (Type of Booking)                       | AG Case<br>NO                 | PCN   | Booking No.                         | Report No.<br>C13031303  | District<br>KN        |
| STD  | Police Dept<br>0010000                     | Tracking No.<br>67754L1                 | PD#                           | Police ID#  | SSN                                 | US Citizen<br>US         | Time in State<br>LIFE |
| Name<br>KOLII, NATHAN KENICHI JR   | Sex<br>M                                   | Race<br>HAWAIIAN                        | DOB<br>10 28 1986             | Age<br>27   | POB<br>HI                           | Height<br>509            | Weight<br>215         |
| AKA  | Hair Color<br>BLK                          | Eye Color<br>BRO                        | Grade Completed<br>12TH GRADE | School Attending  | Susp Drug Use?<br>No                |                          |                       |
| Residence Address<br>82-6009 KAHALOA RD  | City/State<br>CAPT COOK                    |   | Zip Code<br>HI 96704          | Res Phone   |                                     |                          |                       |
| Residence Address - Directions<br>BY MANINI BEACH IN TENT  |  |   |                               |   |                                     |                          |                       |
| Mailing Address<br>82-6009 KAHALOA ROAD  | City/State<br>CAPTAIN COOK                 |   | Zip Code<br>HI 96704          | Dependents<br>1   |                                     |                          |                       |
| Marital Status<br>MARRIED  | Spouse<br>PUA KOLII                        | Employer/Last Employed<br>UNEMPLOYED    |                               | Occupation  |                                     |                          |                       |
| Business Address   |  | City/State                              |                               | Zip Code  | Bus. Phone<br>( ) -                 |                          |                       |
| Emergency Contact<br>SUSANN KOLII  |  | Relationship<br>PARENT                  |                               | Emergency Phone<br>(808) 559-0395                               |                                     |                          |                       |
| Emergency Contact Address<br>82-6009 KAHALUA ROAD  |  | City/State<br>CAPTAIN COOK              |                               | Zip Code<br>HI 96704  |                                     |                          |                       |
| Photo Taken<br>Yes   | Photo Taken By<br>186411 M. OHATA          | Sobriety<br>SOBER                       |                               | Previous Arrest   |                                     |                          |                       |
| Place of Arrest<br>KEALAKEKUA BAY HIST S/P   | Arrest Date/Day<br>11 21 2013 THU          |   | Time<br>1000                  | Seat<br>639   | Census                              | Match<br>2               |                       |
| Arresting Officer<br>M. OHATA  | Initiating Agency<br>DLNR                  | Division                                | Section                       | Unit  | (Test)                              | BAC<br>0                 | COL<br>No             |
| Assisting Officer<br>D. VILORIA  | How Arrested<br>ON VIEW                    | Warrant No.                             |                               | Case In Chief   | Master OTN                          |                          |                       |
| Telephone Call Info<br>#: ( ) -  |  | D/T:                                    |                               | Ofcr:   |                                     |                          |                       |
| I Do Not Wish to Make a Telephone Call Now.  |  |   |                               |   |                                     |                          |                       |
| Signature:   |  |   |                               | Date/Time:  |                                     |                          |                       |
| Received By<br>SGT. RABARA   | Date/Time<br>11 21 2013 1100               | Booked By<br>M. OHATA                   |                               | Date/Time<br>11 21 2013 1100                                    |                                     |                          |                       |
| Charged By<br>M. OHATA   | Date/Time<br>11 21 2013 1100               | Released<br>M. OHATA                    |                               | Date/Time<br>11 21 2013 1130                                    |                                     |                          |                       |
| Vehicle Used - Year/Make/Model   |  | Color                                   | Lic. Number                   | State   | Disposition of Vehicle              |                          |                       |
| Registered Owner   |  | Driver Lic. No.<br>EXPIRED              |                               | State   | Disposition of Keys                 |                          |                       |
| Apparent Injuries<br>NONE  |  |   |                               | Treated/Refused   |                                     |                          |                       |
| Transported By<br>L. KAMAKAU   | Hold for Investigation                     | Requested By                            |                               | Custodial Search By<br>D. VILORIA                               |                                     |                          |                       |
| Crime Type   | If DV, children present?<br>No             | Previous Arrest<br>For DV? No           | Warrant Check<br>Yes          | Warrant Chk By<br>D. VILORIA                                    |                                     |                          |                       |
| Clothing Worn<br>BLACK SHORTS AND GREY T-SHIRT   |  |   | Property                      | Medication<br>NONE  |                                     |                          |                       |
| Chg<br>1   | Arrested For<br>13-146-68 PROH COMM ACT    | Final Charge<br>13-146-68 PROH COMM ACT |                               | Mod<br>PM   | Sev                                 | Booking No.              |                       |
| Report No.<br>C13031303  | District<br>ROR                            | How Released<br>\$                      | Bail Set<br>\$                | Bail/Bond Posted<br>\$  | Bail Receipt No.                    | Bail/Bond Posted by Whom |                       |
| Party Type<br>C  | Party Name<br>DLNR DOCARE, STATE OF HAWAII |   |                               |   | Sex                                 | US Citizen               |                       |
| DOB  | Age  | Relationship                            | Race                          | Res/Visitor   | Res Phone<br>( ) -                  | Bus Phone                |                       |
| Address<br>PO BOX 310  |  | City/State<br>CAPT COOK                 |                               | Zip Code<br>HI 96704  |                                     |                          |                       |
| Place of Offense<br>KEALAKEKUA BAY HIST S/P  | Offense Date/Day<br>11 21 2013 THU         |   | Offense Time<br>1000          | Initial Court Division/Date<br>HD6 KONA DIST CT 01 06 2014 1300 |                                     |                          |                       |
| Synopsis<br>The above mentioned person was arrested on the above mentioned date, time, and place for the above mentioned offense this after said def solicited a kayak rental to an undercover law enforcement officer within Kealakekua Bay Historical State Park during a project. No commercial activity is allowed without being permitted by the State. CLOSED: ARRESTED AND CHARGED. ****THIS ARREST AND PROCESS WAS DONE AS A COURTESY FOR THE LEAD INVESTIGATIVE AGENCY DLNR/DOCARE.**** |  |   |                               |   |                                     |                          |                       |
| Report Written By<br>186411 M. OHATA   |  |   | Date/Time<br>11 21 2013 1130  |   | Supervisor ID<br>187153 SGT. RABARA |                          |                       |

|   |  |                                    |   |                               |   |  |  |
|---|--|------------------------------------|---|-------------------------------|---|--|--|
| <b>STATE OF HAWAII<br/>OBTS/CCH ARREST REPORT</b>   |  | (Type of Booking)                  | AG Case<br>No                           | PCN                           | Booking No.   | Report No.<br>C13031303                              | District<br>KN                         |
| SID<br>A0747045   | Police Dept<br>0010000                     | Tracking No.<br>67748L0            | FA#                                     | Police ID#                    | SSN   | US Citizen<br>US                                     | Time in State<br>LIFE                  |
| Name<br>AQUINO, ALEXANDER ROBERT JR   |  | Sex<br>M                           | Race<br>HAWAIIAN                        | DOB<br>12 03 1973             | Age<br>39   | POS<br>HI  | Height<br>602<br>Weight<br>240         |
| AKA   |  | Hair Color<br>BRO                  | Eye Color<br>BRO                        | Grade Completed<br>10         | School Attending  |  | Susp Drug Use?<br>No                   |
| Residence Address<br>82-5872 NAPOOPOO RD  |  | City/State<br>CAPT COOK            |   | Zip Code<br>HI 96704          | Res Phone<br>(808) 854-9764                                     |  |  |
| Residence Address - Directions<br>BROWN HOUSE WITH BOWN ROOF  |  |                                    |   |                               |   |  |  |
| Mailing Address<br>PO BOX 754   |  | City/State<br>CAPT COOK            |   | Zip Code<br>HI 96704          | Dependents<br>1   |  |  |
| Marital Status<br>MARRIED   | Spouse<br>AMY AQUINO                       |                                    | Employer/Last Employed<br>SELF-EMPLOYED |                               |   | Occupation<br>TOURISM                                |  |
| Business Address<br>SAME AS ABOVE   |  | City/State                         |   | Zip Code                      | Bus. Phone  |  |  |
| Emergency Contact<br>AMY AQUINO   |  | Relationship                       |   |                               | Emergency Phone   |  |  |
| Emergency Contact Address<br>SAME AS DEF  |  | City/State                         |   | Zip Code                      |   |  |  |
| Photo Taken<br>Yes  | Photo Taken By<br>186411 M. OHATA          |                                    | Sobriety<br>SOBER                       |                               | Previous Arrest   |  |  |
| Place of Arrest<br>KEALAKEKUA BAY HIST S/P  |  | Arrest Date/Day<br>11 21 2013 THU  |   | Time<br>1000                  | Beat<br>639   | Census   | Watch<br>2                             |
| Arresting Officer<br>M. OHATA   | Initiating Agcy<br>DLNR                    | Division                           | Section                                 | Unit                          | (Test)  | BAC<br>0   | CDL<br>No<br>CMV<br>No<br>HAZMAT<br>No |
| Assisting Officer<br>D. VILORIA   | How Arrested<br>ON VIEW                    |                                    | Warrant No.                             |                               | Case In Chief   | Master OTW   |  |
| Telephone Call Info<br>#: ( ) - D/T: Ofcr:  |  |                                    |   |                               |   |  |  |
| I Do Not Wish to Make a Telephone Call Now.   |  |                                    |   |                               |   |  |  |
| Signature:  |  |                                    |   | Date/Time:                    |   |  |  |
| Received By<br>SGT. RABARA  |  | Date/Time<br>11 21 2013 1100       |   | Booked By<br>M. OHATA         |   | Date/Time<br>11 21 2013 1100                         |  |
| Charged By<br>M. OHATA  |  | Date/Time<br>11 21 2013 1100       |   | Released<br>M. OHATA          |   | Date/Time<br>11 21 2013 1100                         |  |
| Vehicle Used - Year/Make/Model<br>1997 HONDA  |  | Color<br>CIVIC 2DR                 |   | Lic. Number<br>GPR-087 HI     |   | Disposition of Vehicle<br>PARKED/LOCKED              |  |
| Registered Owner<br>AMY AQUINO  |  | Driver Lic. No.<br>NONE            |   | State                         |   | Disposition of Keys<br>TAKEN                         |  |
| Apparent Injuries   |  |                                    |   |                               |   | Treated/Refused                                      |  |
| Transported By<br>D. VILORIA  |  | Hold for Investigation             |   | Requested By                  |   | Custodial Search By<br>D. VILORIA                    |  |
| Crime Type  |  | If DV, children present?<br>No     |   | Previous Arrest<br>Por DV? No |   | Warrant Check<br>Yes<br>Warrant Chk By<br>D. VILORIA |  |
| Clothing Worn<br>BLACK SHORTS AND WHITE T-SHIRT   |  |                                    |   | Property                      |   | Medication<br>NONE                                   |  |
| Chg<br>1  | Arrested For<br>13-146-68 PROH COMM ACT    |                                    | Final Charge<br>13-146-68 PROH COMM ACT |                               | Mod   | Sev<br>PM  | Booking No.                            |
| Report No.<br>C13031303   | District                                   | How Released<br>ROR                | Bail Set<br>\$                          | Bail/Bond Posted<br>\$        | Bail Receipt No.  | Bail/Bond Posted by Whom                             |  |
| Party Type<br>C   | Party Name<br>DLNR DOCARE, STATE OF HAWAII |                                    |   |                               |   | Sex  | US Citizen                             |
| DOB   | Age  | Relationship                       |   | Race                          | Res/Visitor   | Res Phone<br>( ) -                                   | Bus Phone                              |
| Address<br>PO BOX 310   |  | City/State<br>CAPT COOK            |   | Zip Code<br>HI 96704          |   |  |  |
| Place of Offense<br>KEALAKEKUA BAY HIST S/P   |  | Offense Date/Day<br>11 21 2013 THU |   | Offense Time<br>1000          | Initial Court Division/Date<br>HD6 KONA DIST CT 01 06 2014 1300 |  |  |
| Synopsis<br>The above mentioned person was arrested on the above mentioned date, time, and place for the above mentioned offense this after said def solicited a kayak rental to an undercover law enforcemnt officer within the Kealakekua Bay Historical State Park during a project. No commercial activity of any kind is allowed without being permitted by the State. CLOSED: ARRESTED AND CHARGED. **** THIS ARRESTED AND PROCESS WAS DONE AS A COURTESY FOR LEAD INVESTIGATIVE AGENCY DLNR/DOCARE**** |  |                                    |   |                               |   |  |  |
| Report Written By<br>186411 M. OHATA  |  |                                    | Date/Time<br>11 21 2013 1125            |                               |   | Supervisor ID<br>187153 R. RABARA                    |  |

§13-146-1

Subchapter 1 General Provisions

§13-146-1 Purpose. The purpose of this chapter is to govern the use and protection of all lands, and historical and natural resources within the state park system. [Eff. 4/16/90; comp 6/08/99] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-2 Definitions. As used in this chapter unless otherwise provided:

"Abandoned property" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles or vessels that have been left unattended on land owned or controlled by the State for a continuous period of more than twenty-four hours without the written permission of the board or its authorized representative.

"Authorized representative" means any person authorized by the board of land and natural resources to act for the board including the chairperson, deputy directors, park administrators, park superintendents, park managers, and conservation enforcement officers.

"Board" means the board of land and natural resources.

"Camper" means any person engaged in a camping activity.

"Camping" means remaining within a designated camping area during closed hours or remaining within a state park while in possession of a sleeping bag, tent, tarpaulin, or other camping paraphernalia within the state park one hour after sunset until sunrise.

"Chairperson" means the chairperson of the board of land and natural resources.

"Commercial activity" means the use of or activity in a state park for which compensation is received by any person for goods or services or both

rendered to customers or participants in that use or activity. Display of merchandise, demanding or requesting gifts, money, or services, except as allowed by chapter 13-7, shall be considered commercial activity. Commercial activities include activities whose base of operations are outside the boundaries of the state park, or provide transportation to or from the state park.

"Compensation" includes, but is not limited to monetary fees, barter, or services-in-kind.

"Department" means the department of land and natural resources.

"Lodging" means cabin or shelter units available in certain parks for rental to the public as temporary living quarters.

"Motorized vehicle" means a motor vehicle of any type, including, but not limited to, automobiles, trucks, off highway vehicles such as all terrain vehicles, motorcycles, motor bikes, go-carts, motorcycles, motor scooters, mopeds, and dune buggies whether the vehicle is licensed or unlicensed.

"Nude" means uncovered post-pubertal human genitals, pubic areas, or the nipple or areola of post-pubertal human female breast.

"Picnic" means an outing with food provided by members of the group and eaten in the open.

"Premises" means any lands within the state park system.

"Recreational trailer" means a vehicle propelled by its own power or by some independent power and used as a dwelling.

"State park system" means those public lands or lands under the control and management of the division of state parks.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported

§13-146-67

personnel, a person shall obtain a written permit approved by the board or its authorized representative which shall be subject to terms, conditions, and fees set by the board.

(b) Before any still photograph may be taken by a commercial photographer for commercial purposes, a person shall obtain a written permit approved by the board or its authorized representative. The permit shall be subject to terms, conditions, and fees set by the board. [Eff 4/16/90; am and comp 6/08/99] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-68 Commercial activities. No person shall engage in commercial activities of any kind, without a written permit from the board or its authorized representative. [Eff 12/9/02] (Auth: HRS §184-5) (Imp: HRS §184-5)

**§184-5 Rules and enforcement; penalty.** (a) The department may, subject to chapter 91, make, amend, and repeal rules having the force and effect of law, governing the use and protection of the state park system, including state monuments as established under section 6E-31, and including any private property over which there has been granted to the State any right of free public access or use for recreational, park, viewing of any historical, archaeological, natural, or scientific feature, object, or site, or related purpose, or property thereon, and also governing the use and protection of any recreational, scenic, historical, archaeological, natural, scientific, and related resources of state and private lands, and enforce those rules. Any person who violates any of the rules so prescribed shall be held liable for restoration of or restitution for any damages to public or private property and shall also be subject to the confiscation of any tools and equipment used in the violation and of any plants, objects, or artifacts removed illegally from such properties. Except as otherwise provided by the department, the more restrictive rules of the department shall apply in any unit of the state park system or any public use area which is also governed by the rules of any forest reserve, public hunting ground, or other department district or area.

(b) Except as provided in subsection (c), any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued thereunder, in addition to any other penalties, shall be guilty of a petty misdemeanor and shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(c) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued thereunder, regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein. A person found to have committed such a traffic infraction shall be fined not more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

(d) The fines specified in this section shall not be suspended or waived. Each day of each violation shall constitute a separate offense.

(e) Any civil penalty for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.

(f) The department may confer on the director of state parks and upon other employees of the division the powers of police officers, including the power to serve and execute warrants and arrest, or issue summons or citations to, offenders in all matters relating to the enforcement, in any state park, parkway, or state monument, or in any private property over which there has been granted to the State any right of free public access or use for recreational, park, viewing of any historical, archaeological, natural, or scientific feature, object, or site, or related purpose of:

(1) The laws applicable to the state parks and parkways and to historical objects and sites and the rules adopted under the provisions of this section; and

(2) Traffic laws and ordinances.

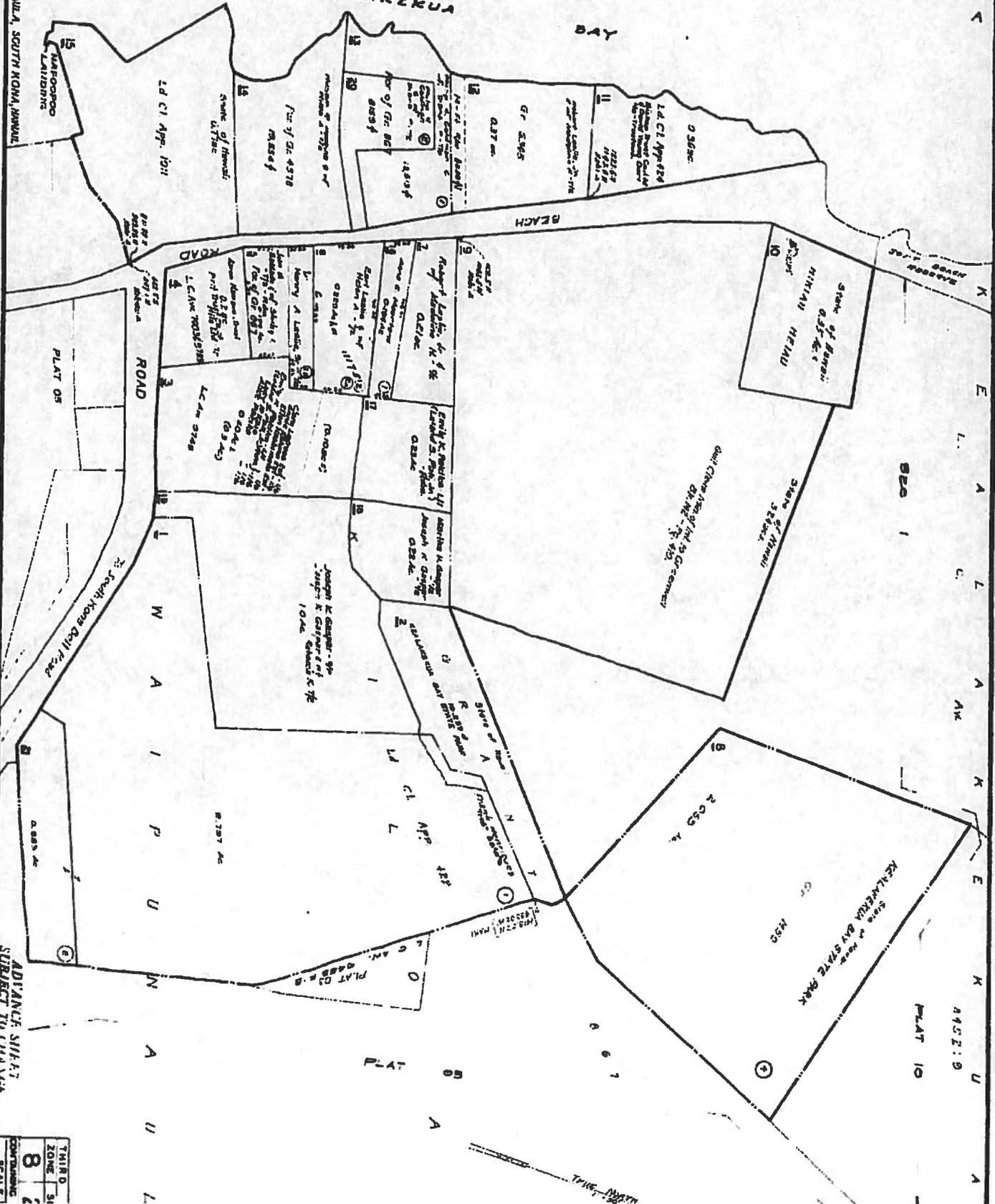
Those police powers shall also extend to the enforcement of laws of the State and the rules of the department relative to the protection and proper use of the recreational, scenic, historical, natural, and archaeological, scientific, and related resources of state and private lands. The conferring of powers shall include the designation of those employees as state parks enforcement officers. [L 1949, c 185, pt of §1; RL 1955, §19-36; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; am L 1965, c 96, §16; HRS §184-5; am L 1974, c 245, §1; am L 1975, c 24, §5; am L 1979, c 105, §13; am L 2002, c 24, §2; am L 2008, c 101, §3]

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KEALAKEKUA BAY



Part of KEALAKEKUA & MAUNAWAHA, SOUTH KOHA, HAWAII

ADVANCE SHEET  
SUBJECT TO CHANGE

|            |    |
|------------|----|
| THIRD      | 2  |
| ZONE       | 31 |
| 8          | 2  |
| CONTAINING |    |
| SCALE      |    |

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**Bay Side Adventures**



**Big Island Canoes**

**Manta Ray, Snorkeling & Kayak Tours**

Experience Kealahou Bay's  
best snorkeling in Hawaii.

Adventure Keahou's Manta Ray dive with  
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Offering great opportunities to  
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**Kayak Rentals = \$75**

**Kayak Tours = \$125**

**Manta Ray Tour = \$50**

**Snorkel Gear = \$10**

**808-896-0610 (Cell)**

**808-365-4244 (Office)**

STATE OF HAWAII  
DLNR/DOCARE

Exhibit # 1

PHOTOGRAPHIC RECORD

Report # HA 14-0249

Classification STATE PARKS

Page 1 of 1 Pages

DATE/TIME: 11-21-13/1000 Hrs

PHOTOGRAPHER: T. BOTELHO

NUMBER OF PHOTOS TAKEN: 4

CAMERA USED: Olympus Stylus Tough

WEATHER: Clear DAY X NIGHT       

| PHOTO # | DESCRIPTION  |
|---------|--|
| 1       | Depicts a forward facing view of vehicle bearing license plate GPR 087 and suspect Alexander Aquino.   |
| 2       | Depicts a driver's side view of vehicle bearing license plate GPR 087.   |
| 3       | Depicts a close up of business sign posted on the drivers's side of vehicle bearing license plate GPR 087.   |
| 4       | Depicts a view of the scene where solicitation for kayak rental occurred. Scene is a rock wall located in the NW corner of the landing fronting the Kealakekua Heiau where Officer GUTIERREZ was solicited to rent kayaks. |
| 5       | Photograph of flyer handed to Officer GUTIERREZ by suspect Alexander Aquino at the scene.  |
|         | *****nothing to follow*****  |
|         |  |
|         |  |
|         |  |
|         |  |
|         |  |
|         |  |
|         |  |
|         |  |

OFFICER: Teri J. BOTELHO  BADGE NO. #87 DATE/TIME 11-21-13/1230

SUPERVISOR APPROVAL  DATE/TIME 11-21-13/1250