

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

February 14, 2014

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

PSF#13MD-180
Maui

Impose a \$1,000.00 Fine, and \$420.00 in Administrative Costs Against Island Adventure Tours, LLC, dba Kelii's Kayak Tours, 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 Island Adventure Tours, LLC (dba. Kelii's Kayak Tours).

LEGAL REFERENCE:

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

LOCATION:

Unencumbered state land situate at Olowalu, Lahaina, Maui at Tax Map Key: (2) 4-8-003:001

CURRENT USE STATUS:

State Beach Reserve, currently vacant and unencumbered.

RESPONSIBLE:

Registrant Name: Island Adventure Tours, LLC
Trade Name: Kelii's Kayak Tours
Owner: Brian Yesland
Address: Kihei, HI 96753

VIOLATION:

On October 18, 2013 at 7:00am, while conducting checks of State lands in the Olowalu area,

Maui Land Agent Larry Pacheco observed three vehicles parked at a location known for unauthorized commercial activities. Upon pulling over and parking, there were two vehicles with large trailers loaded with kayaks attached. After exiting his vehicle Pacheco observed a total of six kayaks laid out on the ground next to a trailer attached to a green Nissan X-Terra multipurpose vehicle, license number MKU-624. Three men were observed to be standing to the rear of a white full size truck. Immediately after Land Agent Pacheco retrieved his camera, one of the men began picking up his kayaks off the ground and proceeded stacking them against one of the trailers. The male, who was later identified as Scott Burbey, appeared very agitated as he stacked the kayaks and later began to load the kayaks onto the trailer. Mr. Burbey became argumentative, stating that Land Agent Pacheco was not in uniform, and had no badge or authority to stop them from conducting their business operation. Pacheco pointed out the state photo identification badge clipped on to the front of his shirt and verbally identified himself. Mr. Burbey was then reminded of a prior encounter on August 29, 2013, where he was briefly told not to leave equipment stored on State land while waiting for clients to arrive. No report was documented then because Pacheco was in the process of addressing a violation from another larger group. At that time, Mr. Burbey had left the area prior to completion of the investigation with the other company. Therefore, Pacheco was unable to ascertain the company Burbey was affiliated with.

After loading all kayaks onto the large trailer, Mr. Burbey used his cell phone to video Land Agent Pacheco's explanation that the entire area was designated as unencumbered state land, and therefore, all commercial activities were prohibited. After calming down, Mr. Burbey provided his full name and verified he was employed by Kelii's Kayak Tours. Mr. Burbey was informed that his employer had recently been before the Board of Land & Natural Resources for previous incidents (on June 29, 2013) wherein he was found to have been conducting commercial activities on state land. At the time, the board made a decision not to issue a (fine as the incident had occurred in 2008), and advised to consider their decision as a first violation. As an employee of Mr. Brian Yesland (owner), Mr. Scott Burbey should have been properly trained and notified that operating kayak tours from unencumbered State lands was prohibited. Land Agent Pacheco determined that Burbey did have knowledge that actions in presetting the commercial kayaks was prohibited, due to the earlier immediate response in picking up the kayaks and attempting to place them back on the trailer.

PRIOR BOARD ACTIONS:

By its action on June 28, 2013, under Item D-9 the Board of Land & Natural Resources approved and amended actions relative to a commercial violation which occurred in 2008 involving the subject activity. The Board decided to amend recommendation number 1 by deleting the \$1,000.00 fine and the \$420.00 administrative costs. Also, the Board did direct staff to continue their inspections and investigations of unencumbered lands for unauthorized commercial activities. A copy of the submittal approved as amended is attached as Exhibit A.

Prior to the close of the June 28, 2013 Board meeting, Kelii's Kayak Tours requested a contested case. Kelii's Kayak Tours, through their legal counsel Mr. Thomas Cole, submitted a petition on July 8, 2013. Pursuant to staff's recommendation, the Board granted the petition for contested case at its meeting on August 9, 2013 under Agenda Item D-11. A copy of the submittal approved as amended is attached as Exhibit B.

However, as the violation occurred in 2008, staff subsequently recommended that the Board rescind both of its prior actions in the finding of the violation and the granting of the contested case petition. The Board approved the recommendation to rescind both actions at its meeting on January 10, 2014, under Agenda item D-10. As a result, Kelii's Kayak Tours has a "clean slate" and this action, if approved, would be considered their first violation. A copy of the approved submittal is attached as Exhibit D.

ADDITIONAL INFORMATION:

Refer to Board Submittal dated June 28, 2013, Item No. D-9 which was approved as amended for previously documented warning and complaint against Island Adventure Tours, LLC, dba Kelii's Kayaks Tours, attached as Exhibit A. Proper signage exists on site notifying beachgoers that commercial activities are prohibited. Refer to the attached photo report within Exhibit A.

REMARKS:

Staff feels the assessment of a fine is reasonable given Island Adventure Tours, LLC (dba. Kelii's Kayak Tours) history of violations and also because they have recently gone before the board to address this same issue of conducting commercial operations on unencumbered State land.

Pursuant to Hawaii Revised Statutes 171-6 (15) which state the following: "Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined not more than \$5,000.00 per violation for a first violation or a violation beyond five years of the last violation; provided that , after written or verbal notification from the department, an additional \$1,000.00 per day per violation may be assessed for each day in which the violation persist.
- (B) Fined not more than \$10,000.00 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000.00 per day per violation may be assessed for each day in which the violation persists.

The Maui District Land Office has been dealing with the problem of commercial operators who, after obtaining a C.O.R.A permit for a designated County Park area, are moving their business operations out of their permitted area onto adjacent State unencumbered lands. The relocation was normally due to changes in weather conditions which negatively affected their tour operations, or because of carrying capacity problems at the assigned and permitted park locations. It appears now that the operators are simply choosing to utilize the Olowalu site as their primary location for their kayak tours as indicated in advertisements and the daily use of the area by multiple vendors.

Mr. Yesland does possess a C.O.R.A permit from the County of Maui to operate his kayak operations from Ukumehame Beach Park (County Park facility). When previously advised that he needed to remain within the designated permit area, he related that he disagreed with this rule and did not intend to stop operating his kayak tours from Olowalu and other public land areas.

The Maui District Land Office (MDLO) has 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 tour 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 brought about by the presence of unauthorized commercial operators.

EXHIBITS:

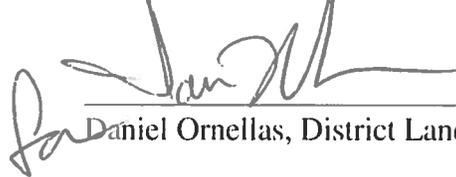
- Exhibit -A - Board Submittal dated June 28, 2013, Item D-9, which was approved as amended by the Board.
- Exhibit -B - Board submittal dated August 9. 2013, Item D-11, grant petition for contested case hearing by Island Adventure Tours, dba Keli's Kayak Tours.
- Exhibit -C - Photo report of latest incident dated 10/18/2013.

RECOMMENDATION: That the Board:

1. Find that Island Adventure Tours, LLC, dba Keli's Kayak Tours, 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 and order payment of a fine of \$1,000.00 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 Island Adventure Tours, LLC, dba Keli's Kayak Tours, shall

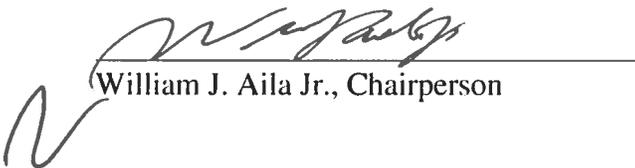
conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, Island Adventure Tours, LLC, dba Keli's Kayak Tours, shall be fined \$1,000.00 for each day or part thereof that such activities occur.

Respectfully Submitted,



Daniel Ornellas, District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson

13D
D-9
AMENDED

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

June 28, 2013

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

PSF#13MD-051
Maui

Impose a \$1,000.00 Fine and \$420.00 in Administrative Costs Against Island Adventure Tours, LLC, dba Kelii's Kayak Tours, 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 Island Adventure Tours, LLC, dba Kelii's Kayak Tours.

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:

Registrant Name: Island Adventure Tours, LLC, a Delaware limited liability company
Trade Name: Kelii's Kayak Tours
Owner: Brian Yesland
Address: Kihei, HI 96753

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
June 28, 2013 *g.o.*

D-9

EXHIBIT A

VIOLATION:

On September 15, 2008 at 7:40 a.m., Conservation and Resources Enforcement Officer Brooks Tamaye observed Mr. Jeremiah Redins of Island Adventure Tours, LLC, dba Kelii's Kayak Tours, conducting commercial business operations on the shoreline at Olowalu beach. Mr. Redins was observed providing lessons and a safety briefing to six clients. At the time, a total of four kayaks were lined up along the shoreline. After monitoring Redins as he completed his safety briefing and assisting his clients with placing the kayaks into the water, Officer Tamaye approached him and identified himself. After informing Redins that it was illegal to be conducting his commercial activities on the beach at that location, Mr. Redins advised Officer Tamaye that he worked for Kelii's Kayak Tours and was just doing what he was told to do. He further stated that each client was charged \$64.00 dollars for the tour and his employer Brian Yesland assigned him to conduct the tour from this location. Redins was reminded of the unauthorized commercial business operations prior leaving to catch up to his group.

On September 15, 2008 at 1430 hours, Mr. Brian Yesland (Owner) contacted Officer Tamaye via phone. Upon being informed of his company's violation that was observed, Yesland explained that he does not solicit any business from the subject location. He added that their activity on the beach is very limited and they do not impede public access and only utilize the beach area to transit into the water. When asked about his employee providing instruction, he added that they are required to give instruction for safety reasons and that the state would be liable if it prevented them from providing safety briefings to their clients. Mr. Yesland further indicated that he would welcome a citation so this issue could be settled in court.

Proper signage exists on site notifying beachgoers that commercial activities are prohibited. Refer to the attached photo report (Exhibit #4).

Previously documented warning and complaint against Kelii's Kayaks Tours:

Maui DOCARE report number MA-09-389

Officer Brooks Tamaye

Date: 9/15/2008

Contact made and warning issued to owner Brian Yesland and employee Jeremiah Redins on 9/15/2008.

Report attached as Exhibit #1

Land Division Report dated 10/15/2008.

By: Land Agent Larry Pacheco

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 believes the assessment of a fine is warranted given Island Adventure Tours, LLC, dba Kelii's Kayak Tours' 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 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.

Mr. Yesland did indicate that he possessed a C.O.R.A permit from the County of Maui to operate his kayak operations from Ukumehame Beach Park (County Park facility). When advised that he needed to remain within the designated permit area, he related that he disagreed with this rule and did not intend to stop operating his kayak tours from Olowalu and other public land areas.

The Maui District Land Office (MDLO) has 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 tour 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 brought about by the presence of unauthorized commercial operators.

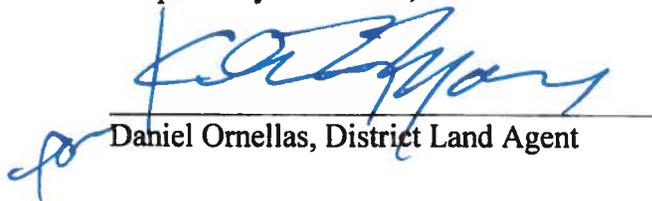
EXHIBITS:

- Exhibit #1 - Maui DOCARE report # MA-09-389, submitted by Officer Brooks Tamaye. (Warning Issued to Owner / Manager Brian Yesland)
- Exhibit #2 - Land Division Complaint dated 10/15/2008, submitted by Land Agent Larry Pacheco.
- Exhibit #3 - Business advertisements which were retrieved from the internet for Kelii's Kayak Tours. Advertisements indicate that Island Adventure Tours, LLC, dba Kelii's Kayak Tours continue to operate their commercial business operations from multiple locations (public lands) without authorization.
- Exhibit #4 - Photo of the posted Olowalu Beach Reserve sign and prohibited activities sign where the commercial activities are being conducted.

RECOMMENDATION: That the Board:

1. Find that Island Adventure Tours, LLC, dba Kelii's Kayak Tours, 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 and 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 Island Adventure Tours, LLC, dba Kelii's Kayak Tours shall conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, Island Adventure Tours, LLC, dba Kelii's Kayak Tours shall be fined \$1,000 for each day or part thereof that such activities occur.

Respectfully Submitted,


Daniel Ornellas, District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson

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Land Board Meeting: June 28, 2013: D-9: Approved as Amended:

Approved as amended.¹ The Board found a violation occurred but because the incident occurred 8 years ago and some other factor, the Board decided to amend recommendation no. 1 by deleting the \$1000 fine and the \$420 administrative costs; and the Board added a recommendation no. 3 directing the Maui offices of the Land Division and DOCARE to continue their diligent inspections or investigations of unencumbered lands for unauthorized commercial activities.

¹ The Board was bothered by the extended delay in bringing this matter to the Board, as the incident occurred in 2008. The Respondent also claimed Larry Pacheco told him in 2008 that it would be okay to operate such as load and unload, teach safety lessons inside the brush area of the unencumbered lands. The respondent also claimed the signs attached to the submittal was not present in 2008, and placed afterward, and today the signs do not exist. Tsuji explained tried to have Larry Pacheco present for the Hearing but Mr. Pacheco had already planned a vacation day to spend on activity with his child. Tsuji further explained his decision not to defer the item until July as the June 28th meeting was the last for Board members Edlao and Morgan. The Board also asked the Chairperson to direct the Maui Land Division to have discussions with the commercial kaya operators about the possibility of applying for a permit or other authorization to allow commercial activities on suitable Maui unencumbered lands.

Dept. DLNR STATE OF HAW. INVESTIGATION REPORT
Div. DOCARE MAUI DISTRICT LAND DIVISION

2008 SEP 23 AM 9:41

(2) 4-8-0031001

| | |
|--|--|
| 1. REPORT NUMBER MA 09-389 | |
| 2. INVESTIGATOR TAMAYE, BROOKS | |
| 3. ISLAND MAUI | |
| 4. DISTRICT LAHAINA | |
| 5. COMPLAINANT (Firm Name, if Business) B. TAMAYE | 6. SEX RACE AGE M |
| 7. D.O.B. | 8. OCCUPATION CREO III |
| 9. ADDRESS | 10. SCHOOL EMPLOYED/SCHOOL ATTENDING Res. Ph. Bus. Ph. |
| 11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET 0.4 MI. WEST OF MP 14 / Across Teen Challenge | 12. DATE/TIME/DAY OCCURRED 09-15-08/0730HRS./MON |
| 13. DATE/TIME REPORTED same | 14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES UNENCUMBERED LANDS OLOWALU SHORELINE |
| 15. HOW REPORTED ON BEAT | |

| | | | | | | |
|----------------------|---------|---------------|----------------|------------------|------------------------|--|
| 16. VEHICLE INVOLVED | Year | Make ISUZU | Model Rodeo | Color(s) Grey | License No. MMT-123 | I.D. Characteristics Trailer plates 688 MUL |
| 17. BOAT INVOLVED | Length | Make | Model | Color(s) | Name | HA No. I.D. Characteristics |
| 18. REGISTERED OWNER | Address | | | | | Res. Phone |

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

| | | | | | | | | |
|---|-----------|------------|--------------|-------------|-------------|-----------------|------------------------------|------------------------|
| 19. NAME REDINS, Jeremiah | Age 37 | Sex M | Code S | Address | | | Res. Phone | Bus. Phone 874-7652 |
| YESLAND, Brian | | M | O | | | | | 874-7652 |
| | | M | | | | | | |
| 20. SEX Composite Description Race A/C/M | Age 37 | Wt. 164 | Build med | Hair BLN | Eyes BLU | Complex fair | Clothes/I.D. Characteristics | |

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 09-15-08, REDINS observed conducting commercial kayak tour. REDINS stated he worked for Keli's Kayaks Tours owned by Brian YESLAND. Warnings issued for violation.

ASSIGNMENT/ARRIVAL:
On 09-15-08, at approximately 0730 hrs. I observed a trailer with kayaks parked along the Olowalu shoreline.

OFFICER OBSERVATIONS:
Upon closer inspection, I observed 7 persons and 4 kayaks on the beach. Person later identified as Jeremiah REDINS was observed to be giving instructions to 6 persons. I further observed a clipboard on the hood of the above vehicle on which there appeared clipped to it liability waiver forms. On the clipboard was also a small booklet appearing to contain photos.

CONTACT WITH SUSPECT:
At approximately 0740 hrs., REDINS assisted the 6 persons into kayaks and launched them from the beach. I then contacted him and identified myself as a Conservation Enforcement Officer. I informed REDINS that it was illegal to be conducting commercial activities on the beach as it was State unencumbered lands.

SUSPECT STATEMENTS:
REDINS stated that he works for Keli's Kayak Tours and was just doing what he was told. When asked, REDINS stated that they charge about \$64.00 per person. He further informed me that the owner of the company was Brian YESLAND.

KELII'S KAYAK TOURS CONTACTED:
On 09-15-08 at approximately 1230 hrs., message left at Keli's Kayak Tours for YESLAND to return my call.

DISPOSITION:
Pending

| | | | | | |
|--|------------------|---------------------------|-------------------------------|---------------------------------------|-----------------|
| 22. REPORT WRITTEN BY Brooks Tamaye | Signature | Badge No. 221 | Date/Time 091508/1345 hrs. | 23. SUPERVISOR APPROVING Signature | Badge No. 40 |
| 24. DISPOSITION <input type="checkbox"/> Unfounded <input type="checkbox"/> Citation/No. <input type="checkbox"/> Arrested/Prosecuted <input type="checkbox"/> Other/No Arrest <input type="checkbox"/> Arrested/No Prosecution <input type="checkbox"/> Adult <input type="checkbox"/> Juvenile | | | | | |
| 25. Date/Time Reproduced | 26. Distribution | 27. Connecting Report No. | | | |

DLNR / DOCARE Maui
FOLLOW -UP REPORT

Report # MA 09-389
Classification: LD: Prohibited Commercial Activity
Location: Olowalu
Date: 09-15-08
Officer: B. TAMAYE *Brian Tamayo #221*

SYNOPSIS:

On 09-15-08, owner of Keli's Kayak Tours warned for conducting commercial activities at Olowalu. Records. Request copy be forwarded to Land Division.

ASSIGNMENT:

Follow-up with owner of Keli's Kayak Tours.

YESLAND STATEMENTS:

On 09-15-08, at approximately 1430 hours, Brian YESLAND owner of Keli's Kayak Tours returned my phone call. I identified myself to YESLAND and informed him of the violation

YESLAND stated that he does not do any sales or solicitation. Their activity on the beach is very limited and they do not impede public access. That they are only accessing or transiting the beach.

When questioned about his employee giving instructions, he stated that they are required to provide instructions for safety reasons and that the state would be liable if it prevented such instruction. (He further stated that the state does not have a permitting system and he would love to have a process like the weddings. He also stated that their association has been asking for such a permit and the contact person of the association is Roger SIMINOT of South Pacific Kayaks.

YESLAND also questioned me if this enforcement was occurring around the state, and I replied to him "yes".

YESLAND expressed that he would welcome a citation so that the issue can be decided in court.

OFFICER ACTIONS:

I warned YESLAND for the violation and cautioned him that further non-compliance may result in other enforcement actions.

DISPOSITION:

Warning issued. Request Copy of Report be forwarded to Land Division.

LAND DIVISION

COMPLAINT FORM

1. Obtain the following information (minimum) from initial call:

Date/Time Of Call: On View, 10/15/08, 7:55 a.m.

Received By: Larry Pacheco

Name of Caller: On View, Land Agent Larry Pacheco Telephone: 984-8103

Address/Location: Olowalu, Lahaina, Maui

Tax Map Key: (2) 4-8-003:001

Additional Information (fully describe the complaint or problem):

On 10/15/08 at 7:50 a.m., while conducting checks of State lands in the Olowalu area, I observed what appeared to be commercial business operations occurring along the shoreline off of Honoapiilani Highway. Upon conducting a check of the subject location, I observed approximately 15 kayaks spread out along the sand shoreline. I also observed two tour guides who were later identified as Aaron Longshore and Jeremiah Redins of Kelii's Kayak Tours providing instruction and a safety briefing to an estimated eight clients. I then observed Mr. Chris Stankis of Maui Eco Tours to have two blue kayaks unattended on the shoreline. After monitoring the area for about five minutes Mr. Stankis then escorted a male and female down to the unattended kayaks and after having them sit in the kayaks, he also provided a safety briefing and operating instructions on the sand beach. Upon completion of the safety briefings, each guide pulled the kayaks into the ocean water and the clients climbed on board. Prior to the guides conducting their tours, I made contact with them and identified myself. I then advised them that they were not allowed to set up the kayaks along the shoreline for business operations and that the area could be used for transit purposes from their vehicles/trailers to the water only. Upon discussing possible alternatives with all three guides, I offered the option of possibly only placing one kayak on the beach while they conducted their instruction and safety briefing and once the briefing was completed then they would carry the kayaks directly from their trailers to the water. All three guides agreed that this was an acceptable solution to the problem of the kayak operations taking up the entire beach area and blocking public use and access.

On 10/15/08 at 2:34 p.m., after advising Administrator Morris Atta of my observations and actions, he reminded that per the Chairperson, no aspect of commercial activities for kayak tours and or surf schools could be conducted on unencumbered lands, other than for transiting over the unencumbered lands to get to the water.

On 10/16/08 at 8:20 a.m., I contacted Mr. Brian Yesland (owner of Kelii's Kayaks) and informed him that I was wrong by providing him the direction to utilize one kayak for instruction purposes on the shoreline (unencumbered land). I then advised him that absolutely no commercial business use of public lands were allowed except for transit purposes, unless authorized by the issuance of a permit

or proper disposition. Mr. Yesland acknowledged that he understood my directions to him, but reminded me that he disagreed with this rule and that he did not intend to stop his kayak operation. He also informed me that he does possess a permit from Maui County to conduct his kayak operation from Ukumehame Beach Park, which is several miles south of the subject location. I informed him that he would be receiving a Cease & Desist notice advising him to stop utilizing public lands for his commercial business operation.

Attempts were also made to contact Maui Eco Tours Five Star Kayaking via the phone number that was provided by guide Chris Stankis, but all attempts were met with negative results. A Cease & Desist notice will also be sent to Maui Eco Tours via certified mail.

Will the caller agree to allow us to release his/her name and telephone number, so the parties concerned can follow-up with the complaint? _____

2. Conduct Internal Review.

- a. Locate area on map(s). Attach tax map.
- b. Determine ownership. Findings and source used to verify (attach documents):
The subject area has been identified as State Unencumbered Lands situate within a Conservation District.

3. If area identified is:

Private property

- 1) Notify caller that complaint or problem involves lands privately owned, provide name of owner(s).

Date called: _____ LD Staff name: _____
Spoke to: _____

State lands under DLNR:

- 1) Provide report of what action taken. If site visit conducted, include photographs.
Cease and Desist notices will be sent to both kayak tour companies via certified mail, advising them of their prohibited uses of State Unencumbered Lands and of potential fines which could be assessed for these violations.

Note: Mr. Yesland related that he never received the first Cease & Desist notice dated September 26, 2008. The Maui District Land Office also has not received the confirmation returned receipt for this letter.

- 2) If lands are under jurisdiction of non-Land Division (e.g., DOFAW, State Parks, etc.), notify applicable DLNR agency, give location information and caller information.

Date called: _____ LD Staff name: _____
Spoke to: _____

State lands under EO or owned by another government agency:

- 1) Notify applicable State agency; give location information and caller information

Date called: _____ LD Staff name: _____
Spoke to: _____

5. Obtain approval from Administrator or Assistant Administrator (or District Land Agent) to close file. [The Administrator's approval will be required if the complaint may lead to a lawsuit, loss of life, etc..]

Recommendation: It is my recommendation that both Maui DOCARE and MDLO continue to monitor the shoreline areas for prohibited uses of Unencumbered State Lands by commercial business operators and to take appropriate actions to regulate these activities. The Maui District Land Office will also work with the County of Maui's Parks and Recreation Department in regulating these activities. Furthermore, if these companies continue to operate enforcement actions should be taken along with the possibility of seizing the equipment under Hawaii Revised Statute 199-7.

Submitted by: Larry Pacheco  Date: 10/16/08

Approved by: _____ Date: _____

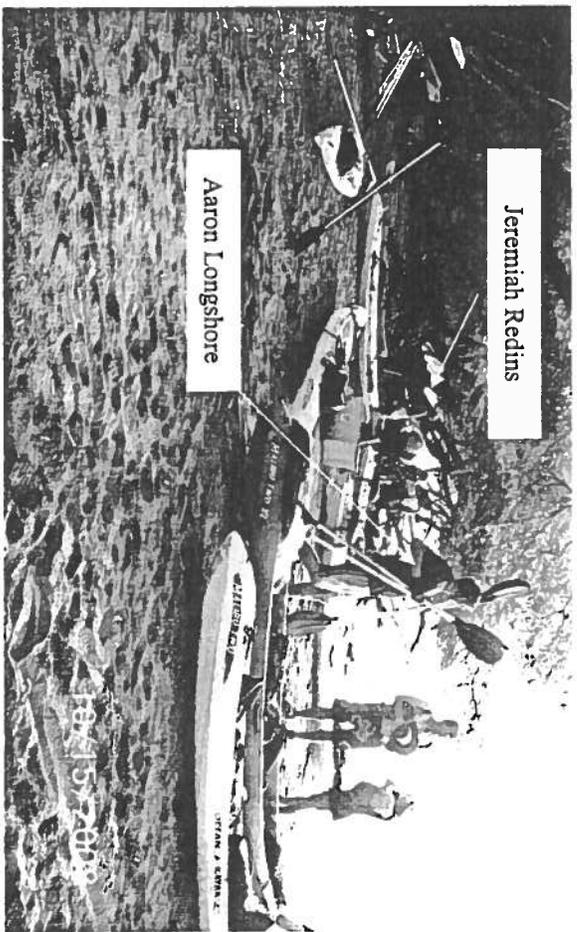
6. Maintain this form and all related documents in District files.

Refer to the attached photo report.

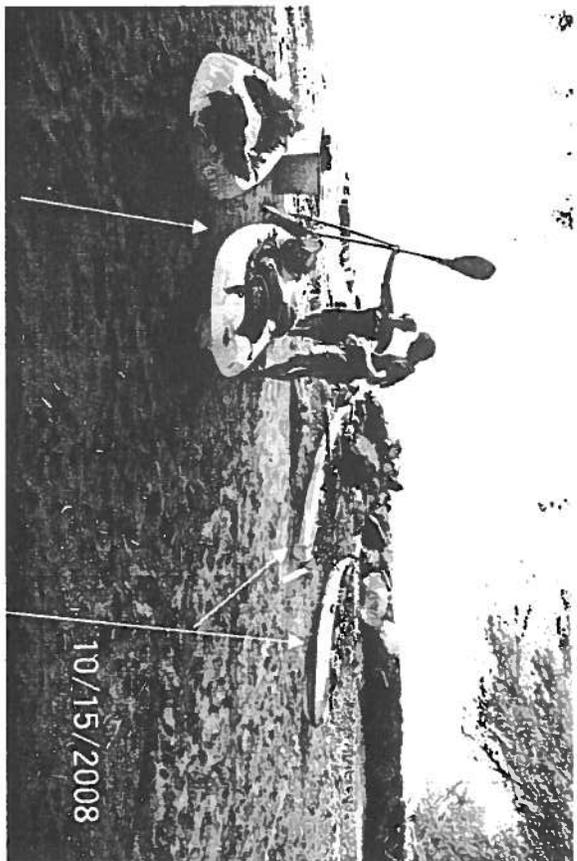
CC: Laura Thielen, Chairperson
Morris Atta, Land Div. Administrator
OCCL
County of Maui, Parks & Recreation, Attn: Lisa Almeida
District File

Photos taken: 10/15/08

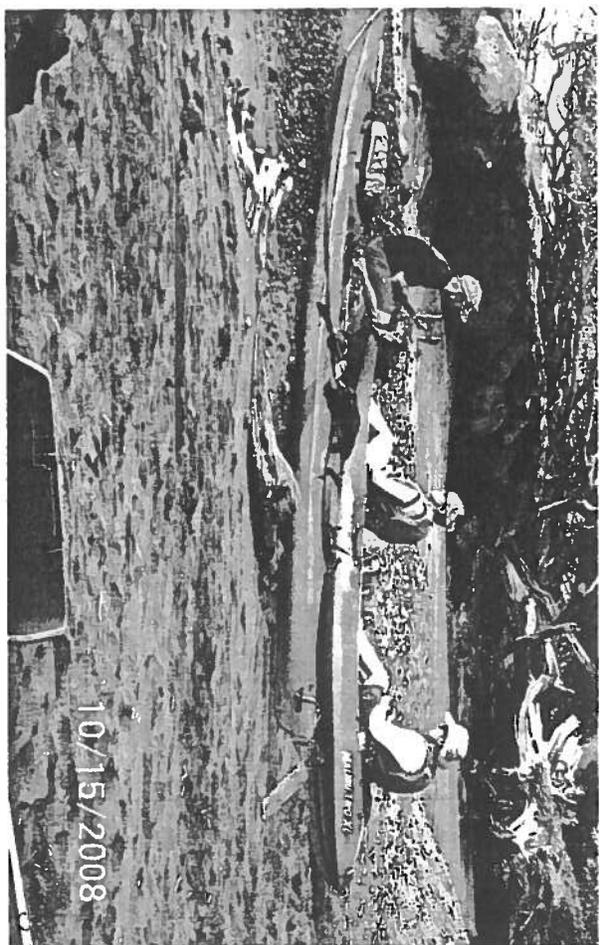
Prohibited Business Operations, TMK: (2) 4-8-003-001



Kealii's Kayak Tours set up along Olowalu Beach. Two guides conducting briefings.



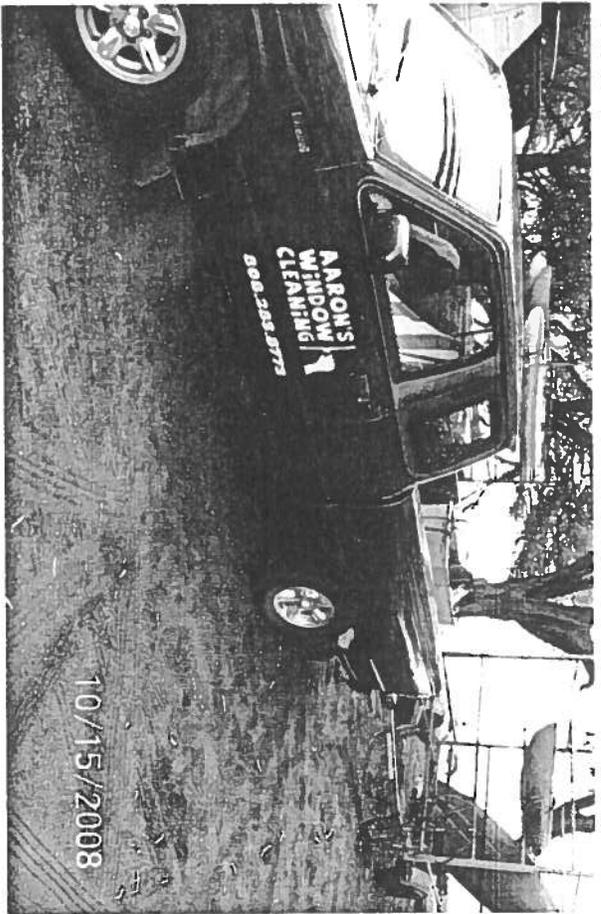
Kealii's clients with kayaks.



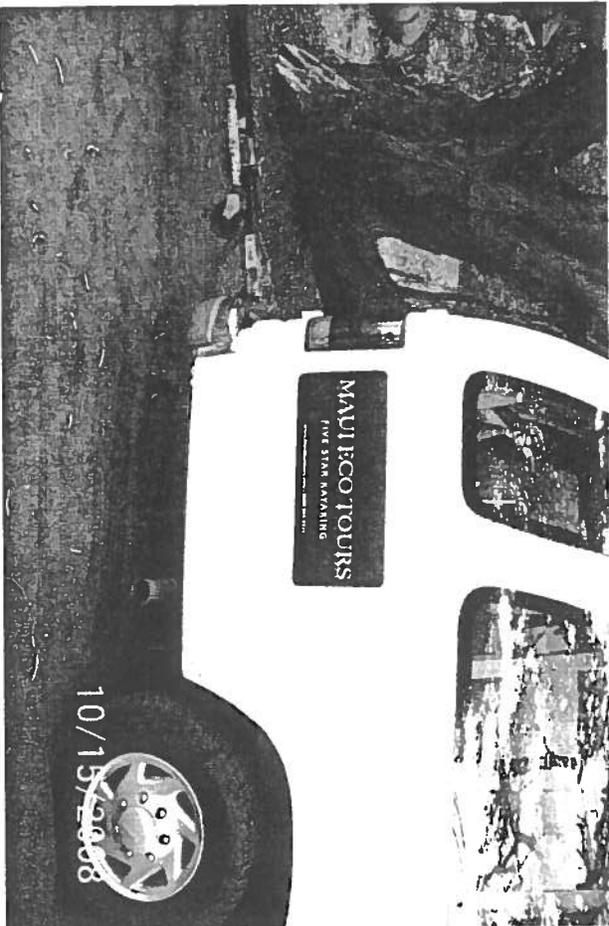
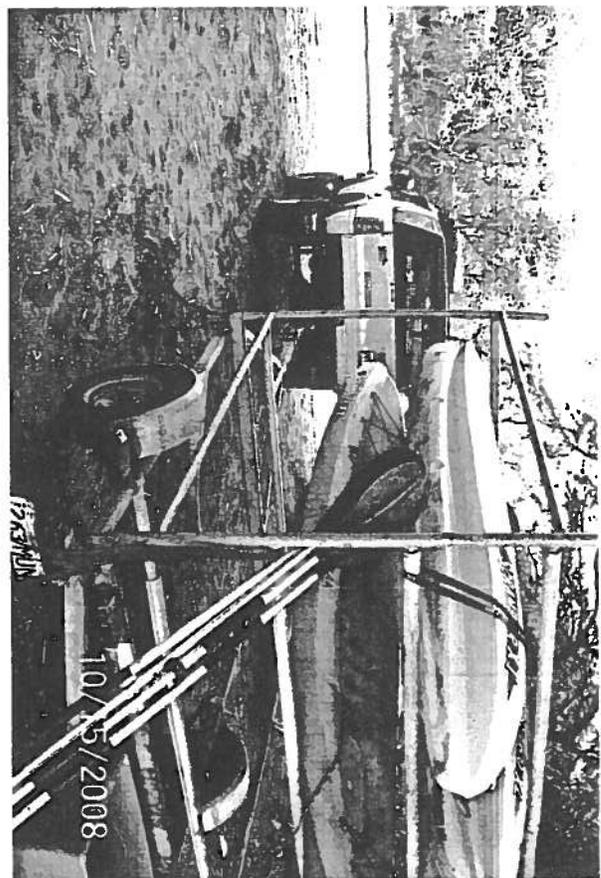
Maui Eco Tours Five Star Kayaking instructor Chris Stankis providing instruction to clients on the shoreline.

Maui Eco Tours Five Star Kayaking kayaks unattended on the shoreline.

Photos taken: 10/15/08



Prohibited Business Operations, TMK (2) 4-8-003:001



Photos of vehicles being utilized to transport equipment to the subject area.

[Home](#) [Specials](#) [Trips](#) [Groups](#) [Contact Us](#) [About Us](#)



888.874.7652



Maui's Best Kayak Tours!
- The Best of Maui Guide

Contact Us

Aloha Aina in Hawaiian means a love for nature, earth and of course the Islands. Keliis Kayak Tours is one of Maui's most experienced and trusted names. We guide our tours as Hawaiians, with that same love and respect for the ocean. For more than 10 years Keliis Kayak Tours has been providing travelers from around the world the very best kayak and snorkeling tours on Maui.

To insure you obtain your first choice of tour time and day, complete the [reservation form](#) or call us toll free to plan and reserve your tour early.

If you would like to obtain additional information on tours, pricing, options, etc. Please call toll free 888-874-7652 or send us an [email](#). We look forward to having you on the water with us!

Privacy: All personal information will be kept confidential. We will not share any of your data with other companies. See our [privacy statement](#).

Keliis Kayak Tours
PMB 420, PO Box 959
Kihei, HI 96753

[email us](#)



Toll Free: 888-874-7652

Local: 808-874-7652

Fax: 808-879-3957

Download Brochure



Download a copy of our brochure in Adobe Acrobat Reader Format.

[Download](#) (358 KB)

KAYAK & SNORKEL TOURS
Turtles Guaranteed!
Dolphin & Whale Sightings
Tropical Fish, Beautiful Scenery
TONS of FUN!

- Small groups
- Top quality equipment
- No experience Necessary
- Experienced personable guides
- Environmentally Friendly

info@keliiskayak.com



FAQ



Download Brochure



Tour Photos

Copyright (c) 2002 Keliis Kayak Tours. All Rights Reserved.

EXHIBIT "3"

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Trips

Why a guided tour?

Sure you can rent a kayak on your own but why? Your time on the water is limited. Our tours take the hassle out of your day. We limit our groups to 8 paddlers per guide. Our guide's deliver all equipment to the beach, unload and load, all snorkel gear and refreshments are provided. For individuals without paddling experience our guides will provide you beachside paddling instruction, assist you with your launch and accompany you for the duration providing assistance where needed. We know the weather, water conditions and where the best snorkeling spots are for marine life viewing. Why not get the most from your paddling adventure?



Our tours include:

- Experienced, personable guides with CPR and first aid training all with many years ocean experience, the island's best.
- Beach side safety and paddling instruction from our guides.
- Quality late model sit-on top ocean kayaks.
- Dry bags for small personal items.
- Top quality snorkel equipment and personal flotation device.
- Snacks and beverages on (lunch included on some tours).

South Shore Turtle Adventure - West Shore Intro - North Shore Explorer

Waterfall Hike & Coral Garden Paddle - Maui Sunset - Paddle Snorkel & Learn to Surf



South Shore Turtle Adventure *Our Signature Tour - Turtle Sightings Guaranteed - Nobody Does It Better!*

One of our most popular tours remains one of our best. Your guide will lead you on a leisurely paddle through Makena Bay along it's beautiful coastline with views of Molokini and Haleakala Volcano. You will have ample opportunities for snorkeling over colorful reefs and in Turtle Town with Hawaii's endangered green sea turtles and a variety of colorful marine life. Don't be surprised if you spot dolphins or during the season, possibly encounter humpback whales. This is a great paddling



adventure for ages 5 & up and all abilities, exciting marine life and tons of fun!

 **2 ½ Hour Tour - \$69**

Departure: 7:30 and 11:00 am daily from Makena Landing (check-in 15 minutes prior)

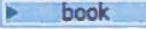
Tour Length: 2.5 Hours

Paddling Distance: 2.5 Miles (approximate)

Snorkel Time: approximately 45 minutes

Includes: snack and beverages

Skill Level: All

 **4 ½ Hour Tour - \$99**

Departure: 7:30 am daily from Makena Landing (check-in 15 minutes prior)

Tour Length: 4.5 Hours

Paddling Distance: 3.5 Miles (approximate)

Snorkel Time: approximately 80 minutes (2 reefs)

Includes: Beach Lunch, snack & beverages while on water

Skill Level: All

Maui West Shore



The magnificent west shore is known for shallow calm clear water, a delight for paddlers. Enjoy the astounding west shore scenery including the majestic West Maui Mountains and Ukumehame Valley. While in the water you will have chance to snorkel at several prime spots such as Coral Gardens or Olowalu Marine Sanctuary, and experience a variety of marine life over colorful coral reefs including giant sea turtles. This is a convenient tour for those staying in west side hotels and great for all levels of paddlers.

 **2 ½ Hour Tour - \$69**

Departure: 7:30 am and 11:00 am daily from Olowalu (check-in 15 minutes prior)

Tour Length: 2.5 Hours

Paddling Distance: 2.5 Miles (approximate)

Snorkel Time: approximately 45 minutes

Includes: snack and beverages

Skill Level: All

 **4 ½ Hour Tour - \$99**

Departure: 7:30 am daily from Olowalu (check-in 15 minutes prior)

Tour Length: 4.5 Hours

Paddling Distance: 3.5 Miles (approximate)

Snorkel Time: approximately 80 minutes (2 reefs)

Includes: Beach Lunch, snack & beverages while on water

Skill Level: All

Maui North Shore Explorer (Tour operates only May 1 - October 15)

Leave from beautiful D.T. Flemming beach park and paddle along Maui's northwestern rugged shorelines few people have the opportunity to experience. A spectacular coastal viewing and snorkeling tour. Honolua Bay, a marine reserve area, offers breathtaking topside and underwater scenery, tons of fish, turtles, coral and great visibility. As an added bonus this tour offers a good chance for dolphin sightings. Because of prevailing winds and wave conditions. This tour operates only May 1 - Sept 30 and is limited to ages 10 and up.



 **3 Hour Tour - \$79**

Departure: 7:30 am daily from D.T. Flemming Beach Park

Tour Length: 3 Hours

Paddling Distance: 3 Miles (approximate)

Snorkel Time: approximately 45 minutes

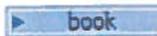
Includes: Snack & beverages while on water

Skill Level: All

Maui Sunset Tour



What better way to experience Maui's stunning world-class sunsets, than from the ocean. Before the sun dips in the horizon you will paddle along Maui's western seashore offering magnificent vista's of the West Maui mountain range and valley's. The beauty and serenity of being on the water as the sun dips in the Hawaiian sky is a moment you won't want to miss.

 **1.5 Hour Tour - \$64**

Departure: Between 4:00 and 5:30 PM depending on season. Call for exact departure time and location.

Tour Length: 2 Hours

Paddling Distance: 1.5 Miles (approximate)

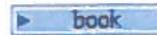
Includes: snack and beverages

Skill Level: All

Paddle, Snorkel & Learn to Surf *Do it all in a day!*

Your morning starts with a surf lesson designed for time surfers. Your instructor will teach you surfing etiquette and wave riding fundamentals. Classes last 2 hours with a maximum group size of 6 to ensure students receive the personal attention they need to develop their surfing skills. We guarantee you will be surfing in one easy lesson your next lesson is free. After surfing, come off the water for a break and a delicious lunch then head out with your kayak guide on a leisurely paddle through Makena Bay along it's beautiful coastline with views of Molokini and Haleakala Volcano. You will have ample opportunities for snorkeling over colorful reefs and in Turtle Town with Hawaii's endangered green sea turtles and a variety of colorful marine life. Don't be surprised if you spot dolphins or during the season, possibly encounter humpback whales. Minimum Age 8 years and up.



 **6 ½ Hours - \$139**

Departure: Check in 7:15 AM, Makena Landiing

Tour Length: 6.5 Hours

Distance: 2 miles (approximate)

Snorkel Time: approximately 45 minutes

Includes: refreshments and snacks on the water and full lunch before surfing. Surf lesson includes surfboard, water booties and rash-guard.

Skill Level: ALL (8 years and up)

Waterfall Hike & Coral Garden Paddle *Do it all in a day!*



HIKE MAUI and KELII'S KAYAK have teamed up to offer a day tour that gives you an incredible land and sea experience. Your adventure starts with a morning kayak tour along Maui's majestic West Shore known for its calm, clear waters and magnificent reefs. We stop to snorkel at some of our favorite spots in the Olowalu Marine Sanctuary where you will view a variety of marine life including Hawaiian Green Sea turtles. After enjoying Maui's ocean beauty, your hike guide will transport you to Maui's lush east side for an easy hike to two waterfalls and pools where there is plenty of time to swim, jump from safe rock ledges. Learn about flora and fauna from your knowledgeable guide. Fun, easy and safe. Great for families. This is a true magical Maui experience. (Includes lunch)

Want more info on the Hike? Check out the [slide show](#)

[back](#) **7 Hours - \$160** *This tour requires a minimum of 4 to confirm departure.*

Departure: 7:30 am (Daily) from Olowalu (check-in 15 minutes prior)

Tour Length: 7 Hours

Distance: 2 mile paddle plus 1 mile hike (approximate)

Snorkel Time: approximately 45 minutes

Includes: refreshments and snacks on the water and full lunch during hike

Skill Level: All

Terms and Conditions

All prices are per person and do not include 4.4% sales tax. Tours take place weather permitting. Departure sites may be substituted depending on water and weather conditions at the discretion of your guide. There are no refunds for cancellations within 24 hours of tour departure.

KAYAK & SNORKEL TOURS
 Turtles Guaranteed!
 Dolphin & Whale Sightings
 Tropical Fish, Beautiful Scenery
 TONS of FUN!

- Small groups
- Top quality equipment
- No experience Necessary
- Experienced personable guides
- Environmentally Friendly

info@keliiskayak.com



FAQ



Download Brochure



Tour Photos

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

2013 2-11
AMENDED

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

August 9, 2013

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

PSF No.: 13MD-051
MAUI

Request that the Board Grant Petition for Contested Case Hearing by Island Adventure Tours, LLC, dba Kelii's Kayak Tours for a Contested Case Hearing as to Enforcement Action Against Island Adventure Tours, LLC, dba Kelii's Kayak Tours 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 June 28, 2013, the Board approved staff's recommendation as follows:

- 1) Find that Island Adventure Tours, LLC, dba Kelii's Kayak Tours, 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.

Although the Board found that the violation occurred, it rejected the staff's recommendation to assess a \$1000 fine and \$420 administrative costs as the violation occurred in 2008. The Board also added a recommendation directing the Maui offices of Land Division and DOCARE continue their diligent inspections or investigations of unencumbered lands for unauthorized commercial activities. A copy of the submittal is attached as Exhibit A.

Petitioner orally requested a contested case hearing before the close of the meeting on June 28, 2013.

On July 8, 2013, the Department received a petition for contested case from attorney Thomas Cole, on behalf of Island Adventure Tours, LLC, pursuant to Hawaii Administrative Rules 13-1-29 and 13-1-31.1. A copy of the petition is attached as Exhibit B.

After consultation with the Department of Attorney General, the Department is recommending that the petitions be granted.

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
August 9, 2013 10

D-11

Exhibit B

RECOMMENDATION: That the Board:

- 1) Grant the petitions and authorize a contested case as to the finding against Island Adventure Tours, LLC, dba Kelii's Kayak Tours.
- 2) Authorize appointment of a Hearing Officer to conduct hearings relevant to the petition 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

Land Board Meeting: August 9, 2013; D-11: Approved as amended.

Approved as amended. The Board amended paragraph 1 of the recommendations section to read: "Grant the petition, as amended, and authorize a contested case as to the finding against Island Adventure Tours, LLC, dba Kelii's Kayak Tours."

Photos taken: 10/18/2013



Photo of Kelii's Kayak Tour instructor / guide Mr. Scott Burbey as he picks up kayaks which he had previously preset on the ground while waiting for clients.

Island Adventure Tours, LLC, dba Kelii's Kayak Tours



Photo depicting remaining kayaks laid out on the ground (State Land) while waiting for clients to arrive for a kayak tour.



Photo of Mr. Burbey staking kayaks next to his trailer after he observed Maui District Land Office staff.

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

January 10, 2014

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

PSF No.: 13MD-051
PSF No.: 13MD-009
MAUI

Rescind the Following Prior Board Actions of:

June 28, 2013, Item D-9, Approved as Amended, "Impose a \$1,000.00 Fine and \$420.00 in Administrative Costs Against Island Adventure Tours, LLC, dba Kelii's Kayak Tours, for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, at TMK: (2) 4-8-003:001.";

August 9, 2013, Item D-11, Approved as Amended, "Request that the Board Grant Petition for Contested Case Hearing by Island Adventure Tours, LLC, dba Kelii's Kayak Tours for a Contested Case Hearing as to Enforcement Action Against Island Adventure Tours, LLC, dba Kelii's Kayak Tours 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"; and

Withdrawal of Item D-7, approved on August 23, 2013, 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.

The Board may hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

At its meeting on June 28, 2013, under Agenda Item D-9, the Board found a violation against Island Adventure Tours, LLC, dba Kelii's Kayak Tours ("Petitioner Kelii's Kayak Tours") for conducting unauthorized commercial activities on State unencumbered lands located at Olowalu, Maui. However, the Board denied staff's request to impose a fine and administrative costs, as the violation was found to have occurred in 2008. Prior to the conclusion of the Board meeting, Petitioner Kelii's Kayak Tours orally requested a contested case, and filed a petition for contested case on June 28, 2013. At its meeting on August 9, 2013, under Agenda Item D-11,

**APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON**

January 10, 2014 *jo.*

D-10

EXHIBIT "D"

the Board granted, as amended, the request for a contested case hearing. A copy of the approved submittal as amended is attached as Exhibit A.

At its meeting on July 12, 2013, under Agenda Item D-10, the Board found a violation against KRS Investments, LLC dba South Pacific Kayaks & Outfitters and Tiki Team Adventures (collectively "Petitioner KRS Investments") for conducting unauthorized commercial activities on State unencumbered lands located at Olowalu, Maui. In finding the violation, the Board imposed a \$1000 fine and \$420 in administrative costs against Petitioner KRS Investments. Prior to the conclusion of the meeting, Petitioner KRS Investments orally requested a contested case, and filed three petitions for contested case for each entity named in the violation (i.e., KRS Investments LLC, South Pacific Kayaks & Outfitters and Tiki Team Adventures, respectively) on July 22, 2013. At its meeting on August 23, 2013, under Agenda Item D-7, the Board consolidated the petitions and granted a single contested case hearing. A copy of the approved submittal is attached as Exhibit B.

Prior to the contested case hearing, the Department, the Attorney General and Mr. Thomas R. Cole, attorney for both petitioners, reached an agreement to resolve both contested cases, which is now brought before the Board for approval. The Board is requested to:

- 1) Rescind the finding of the violation against Petitioner Kelii's Kayak Tours, approved as amended under Item D-9 on June 28, 2013;
- 2) Rescind the grant of the petition for contested case hearing filed by Petitioner Kelii's Kayak Tours, approved as amended under Item D-11 on August 9, 2013; and
- 3) Approve the requested withdrawal of the petition for contested case hearing filed by Petitioner KRS Investments and approved under Item D-7 on August 23, 2013.

The basis for recommending rescinding the violation against Petitioner Kelii's Kayak Tours is that the violation occurred in 2008. In effect, this would provide Kelii's Kayak Tours with a "clean slate", and if and when the Board finds another violation, it would be considered a first offense. With respect to Petitioner KRS Investments, the Petitioner has requested the withdrawal of their petition for contested case, and staff recommends that the Board approve the withdrawal. A copy of the request to withdraw the contested case petition is attached as Exhibit C. As a result, the Board's finding of the violation at its July 12, 2013 meeting will stand, and Petitioner KRS Investments will be subject to the fine and administrative costs as approved by the Board.

RECOMMENDATION: That the Board:

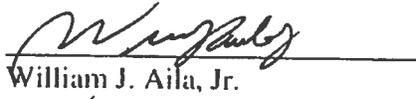
- 1) Rescind the prior Board actions approved as amended on June 28, 2013 under Item D-9, and August 9, 2013 under item D-11, as described above; and
- 2) Approve the requested withdrawal by Petitioner KRS Investments of the petition of contested case hearing approved on August 23, 2013, under Item D-7.

Respectfully submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson



AMENDED

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

August 9, 2013

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

PSF No.: 13MD-051
MAUI

Request that the Board Grant Petition for Contested Case Hearing by Island Adventure Tours, LLC, dba Kelii's Kayak Tours for a Contested Case Hearing as to Enforcement Action Against Island Adventure Tours, LLC, dba Kelii's Kayak Tours 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 June 28, 2013, the Board approved staff's recommendation as follows:

- 1) Find that Island Adventure Tours, LLC, dba Kelii's Kayak Tours, 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.

Although the Board found that the violation occurred, it rejected the staff's recommendation to assess a \$1000 fine and \$420 administrative costs as the violation occurred in 2008. The Board also added a recommendation directing the Maui offices of Land Division and DOCARE continue their diligent inspections or investigations of unencumbered lands for unauthorized commercial activities. A copy of the submittal is attached as Exhibit A.

Petitioner orally requested a contested case hearing before the close of the meeting on June 28, 2013.

On July 8, 2013, the Department received a petition for contested case from attorney Thomas Cole, on behalf of Island Adventure Tours, LLC, pursuant to Hawaii Administrative Rules 13-1-29 and 13-1-31.1. A copy of the petition is attached as Exhibit B.

After consultation with the Department of Attorney General, the Department is recommending that the petitions be granted.

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
August 9, 2013

D-11

EXHIBIT "A"

RECOMMENDATION: That the Board:

- 1) Grant the petitions and authorize a contested case as to the finding against Island Adventure Tours, LLC, dba Kelii's Kayak Tours.
- 2) Authorize appointment of a Hearing Officer to conduct hearings relevant to the petition 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

N

Land Board Meeting: August 9, 2013; D-11: Approved as amended.

Approved as amended. The Board amended paragraph 1 of the recommendations section to read: "Grant the petition, as amended, and authorize a contested case as to the finding against Island Adventure Tours, LLC, dba Kelii's Kayak Tours."

AMENDED

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

June 28, 2013

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

PSI-#13MD-051
Maui

Impose a \$1,000.00 Fine and \$420.00 in Administrative Costs Against Island Adventure Tours, LLC, dba Keli's Kayak Tours, 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 Island Adventure Tours, LLC, dba Keli's Kayak Tours.

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:

Registrant Name: Island Adventure Tours, LLC, a Delaware limited liability company
Trade Name: Keli's Kayak Tours
Owner: Brian Yesland
Address: Kihei, HI 96753

Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
June 28, 2013 go.

EXHIBIT "A"

D-9

VIOLATION:

On September 15, 2008 at 7:40 a.m., Conservation and Resources Enforcement Officer Brooks Tamaye observed Mr. Jeremiah Redins of Island Adventure Tours, LLC, dba Keli's Kayak Tours, conducting commercial business operations on the shoreline at Olowalu beach. Mr. Redins was observed providing lessons and a safety briefing to six clients. At the time, a total of four kayaks were lined up along the shoreline. After monitoring Redins as he completed his safety briefing and assisting his clients with placing the kayaks into the water, Officer Tamaye approached him and identified himself. After informing Redins that it was illegal to be conducting his commercial activities on the beach at that location, Mr. Redins advised Officer Tamaye that he worked for Keli's Kayak Tours and was just doing what he was told to do. He further stated that each client was charged \$64.00 dollars for the tour and his employer Brian Yesland assigned him to conduct the tour from this location. Redins was reminded of the unauthorized commercial business operations prior leaving to catch up to his group.

On September 15, 2008 at 1430 hours, Mr. Brian Yesland (Owner) contacted Officer Tamaye via phone. Upon being informed of his company's violation that was observed, Yesland explained that he does not solicit any business from the subject location. He added that their activity on the beach is very limited and they do not impede public access and only utilize the beach area to transit into the water. When asked about his employee providing instruction, he added that they are required to give instruction for safety reasons and that the state would be liable if it prevented them from providing safety briefings to their clients. Mr. Yesland further indicated that he would welcome a citation so this issue could be settled in court.

Proper signage exists on site notifying beachgoers that commercial activities are prohibited. Refer to the attached photo report (Exhibit #4).

Previously documented warning and complaint against Keli's Kayaks Tours:

Maui DOCARE report number MA-09-389

Officer Brooks Tamaye

Date: 9/15/2008

Contact made and warning issued to owner Brian Yesland and employee Jeremiah Redins on 9/15/2008.

Report attached as Exhibit #1

Land Division Report dated 10/15/2008.

By: Land Agent Larry Pacheco

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 |
| DLNR Maui DOCARE | No comments |
| DLNR Maui DOBOR | No response |
| | No objections |
| | No comments |

REMARKS:

Staff believes the assessment of a fine is warranted given Island Adventure Tours, LLC, dba Kelii's Kayak Tours' 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 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.

Mr. Yesland did indicate that he possessed a C.O.R.A permit from the County of Maui to operate his kayak operations from Ukumehame Beach Park (County Park facility). When advised that he needed to remain within the designated permit area, he related that he disagreed with this rule and did not intend to stop operating his kayak tours from Olowalu and other public land areas.

The Maui District Land Office (MDLO) has 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 tour 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 brought about by the presence of unauthorized commercial operators.

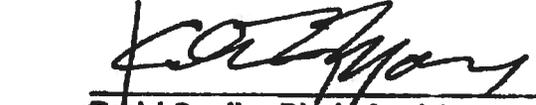
EXHIBITS:

- Exhibit #1 - Maui DOCARE report # MA-09-389, submitted by Officer Brooks Tamaye. (Warning Issued to Owner / Manager Brian Yesland)
- Exhibit #2 - Land Division Complaint dated 10/15/2008, submitted by Land Agent Larry Pacheco.
- Exhibit #3 - Business advertisements which were retrieved from the internet for Kelii's Kayak Tours. Advertisements indicate that Island Adventure Tours, LLC, dba Kelii's Kayak Tours continue to operate their commercial business operations from multiple locations (public lands) without authorization.
- Exhibit #4 - Photo of the posted Olowalu Beach Reserve sign and prohibited activities sign where the commercial activities are being conducted.

RECOMMENDATION: That the Board:

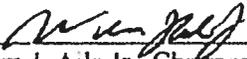
1. Find that Island Adventure Tours, LLC, dba Kelii's Kayak Tours, violated the provisions of Chapter 171-6, Hawaii Revised Statutes, and Hawaii Administrative Rules 13-221-35, Commercial Activities, by conducting unauthorized commercial activities on unencumbered State land and order it to pay a fine 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 Island Adventure Tours, LLC, dba Kelii's Kayak Tours shall conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, Island Adventure Tours, LLC, dba Kelii's Kayak Tours shall be fined \$1,000 for each day or part thereof that such activities occur.

Respectfully Submitted,



Daniel Omellas, District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson

N

Land Board Meeting: June 28, 2013: D-9: Approved as Amended:

Approved as amended.¹ The Board found a violation occurred but because the incident occurred 8 years ago and some other factor, the Board decided to amend recommendation no. 1 by deleting the \$1000 fine and the \$420 administrative costs; and the Board added a recommendation no. 3 directing the Maui offices of the Land Division and DOCARE to continue their diligent inspections or investigations of unencumbered lands for unauthorized commercial activities.

¹ The Board was bothered by the extended delay in bringing this matter to the Board, as the incident occurred in 2008. The Respondent also claimed Larry Pacheco told him in 2008 that it would be okay to operate such as load and unload, teach safety lessons inside the brush area of the unencumbered lands. The respondent also claimed the signs attached to the submittal was not present in 2008, and placed afterward, and today the signs do not exist. Tsuji explained tried to have Larry Pacheco present for the Hearing but Mr. Pacheco had already planned a vacation day to spend on activity with his child. Tsuji further explained his decision not to defer the item until July as the June 28th meeting was the last for Board members Edlao and Morgan. The Board also asked the Chairperson to direct the Maui Land Division to have discussions with the commercial kaya operators about the possibility of applying for a permit or other authorization to allow commercial activities on suitable Maui unencumbered lands.

COPY

DOC.AHC 6

STATE OF HAWAII
INVESTIGATION REPORT
DEPT. OF LAND AND NATURAL RESOURCES

SEP 23 AM 9:41

(2) 4-8-0031001

CLASSIFICATION
10 PROHIBITED COMMERCIAL ACTIVITIES

5 COMPLAINANT (If firm Name, if Business)
6 TAMAYE

3 ISLAND
MAUI

8 SEX
M

9 RACE

10 AGE

11 DOB

12 OCCUPATION
CREW III

9 ADDRESS

10 SCHOOL EMPLOYED/SCHOOL ATTENDING

Res Ph

Usr Ph

11 LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET
0.4 MI WEST OF MP 14 / Across Toon Challenge

12 DATE/TIME/DAY OCCURRED
09 15 08/0730HRS /MON

13 DATE/TIME REPORTED
SUMO

14 DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES
UNENCUMB RED LANDS OLOWALU SHORELIN

15 HOW REPORTED
ON BEAT

| | | | | | | |
|---------------------|---------|---------------|----------------|------------------|-----------------------|--|
| 16 VEHICLE INVOLVED | Year | Make ISUZU | Model Rodeo | Color(s) Grey | License No MMT-123 | I.D. Characteristics Trailer plates G88 M/L |
| 17 BOAT INVOLVED | Length | Make | Model | Color(s) | Name | HA No / I.D. Characteristics |
| 18 REGISTERED OWNER | Address | | | | Res Phone | |

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

| 19 NAME | Age | Sex | Code | Address | Res Phone | Bus Phone |
|------------------|-----|-----|------|---------|-----------|-----------|
| REDINS, Joramlah | 37 | M | S | | | 874-7652 |
| YESLAND, Brian | | M | O | | | 874-7652 |

| 20 SEX | Composite Description | Race | Age | Wt | Build | Hair | Eyes | Complex | Clothing/I.D. Characteristics |
|--------|-----------------------|------|-----|-----|-------|------|------|---------|-------------------------------|
| A/C/M | | | 37 | 164 | med | BLN | BLU | fair | |

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 09-15-08, REDINS observed conducting commercial kayak tour. REDINS stated he worked for Kelli's Kayaka Tours owned by Brian YESLAND. Warnings issued for violation.

ASSIGNMENT/ARRIVAL:
On 09-15-08, at approximately 0730 hrs. I observed a trailer with kayaks parked along the Olowalu shoreline.

OFFICER OBSERVATIONS:
Upon closer inspection, I observed 7 persons and 4 kayaks on the beach. Person later identified as Joramlah REDINS was observed to be giving instructions to 6 persons. I further observed a clipboard on the hood of the above vehicle on which there appeared clipped to it liability waiver forms. On the clipboard was also a small booklet appearing to contain photos.

CONTACT WITH SUSPECT:
At approximately 0740 hrs., REDINS assisted the 6 persons into kayaks and launched them from the beach. I then contacted him and identified myself as a Conservation Enforcement Officer. I informed REDINS that it was illegal to be conducting commercial activities on the beach as it was State unencumbered lands.

SUSPECT STATEMENTS:
REDINS stated that he works for Kelli's Kayak Tours and was just doing what he was told. When asked, REDINS stated that they charge about \$64.00 per person. He further informed me that the owner of the company was Brian YESLAND.

KELI'S KAYAK TOURS CONTACTED:
On 09-15-08 at approximately 1230 hrs., message left at Kelli's Kayak Tours for YESLAND to return my call.

DISPOSITION:
Pending

| | | | | |
|---|------------------|------------------------------|---|----------------|
| 22. REPORT WRITTEN BY Brooks Tamayo | Badge No 221 | Date/Time 091508/1345 hrs | 23. SUPERVISOR APPROVED <i>[Signature]</i> | Badge No 10 |
| 24. DISPOSITION <input type="checkbox"/> Unfounded <input type="checkbox"/> Arrest/No Prosecution <input type="checkbox"/> Arrest <input type="checkbox"/> Arrest/Prosecution <input type="checkbox"/> Arrests <input checked="" type="checkbox"/> Other/As Amd | | | | |
| 25. Date/Time Reported | 26. Distribution | 27. Connecting Report No | | |

EXHIBIT " 1 "

DLNR / DOCARE Maui
FOLLOW UP REPORT

Report # MA 09-389
Classification. LD: Prohibited Commercial Activity
Location: Olowalu
Date: 09-15-08
Officer: B. TAMAYE *B. Tamaye 09/22/08*

SYNOPSIS:

On 09-15-08, owner of Kelii's Kayak Tours warned for conducting commercial activities at Olowalu. Records. Request copy be forwarded to Land Division

ASSIGNMENT:

Follow-up with owner of Kelii's Kayak Tours.

YESLAND STATEMENTS:

On 09-15-08, at approximately 1430 hours, Brian YESLAND owner of Kelii's Kayak Tours returned my phone call. I identified myself to YESLAND and informed him of the violation

YESLAND stated that he does not do any sales or solicitation. Their activity on the beach is very limited and they do not impede public access. That they are only accessing or transiting the beach.

When questioned about his employees giving instructions, he stated that they are required to provide instructions for safety reasons and that the state would be liable if it prevented such instruction. He further stated that the state does not have a permitting system and he would love to have a process like the weddings. He also stated that their association has been asking for such a permit and the contact person of the association is Roger SIMINOT of South Pacific Kayaks.

YESLAND also questioned me if this enforcement was occurring around the state, and I replied to him "yes".

YESLAND expressed that he would welcome a citation so that the issue can be decided in court.

OFFICER ACTIONS:

I warned YESLAND for the violation and cautioned him that further non-compliance may result in other enforcement actions.

DISPOSITION:

Warning issued. Request Copy of Report be forwarded to Land Division.

LAND DIVISION

COMPLAINT FORM

1. Obtain the following information (minimum) from initial call:

Date/Time Of Call On View 10/15/08, 7:55 a.m.
Received By: Larry Pacheco

Name of Caller: On View Land Agent Larry Pacheco Telephone: 984-8103
Address/Location: Olowalu Lahaina, Maui
Tax Map Key (2) 4 8-003:001

Additional Information (fully describe the complaint or problem)

On 10/15/08 at 7:50 a.m., while conducting checks of State lands in the Olowalu area, I observed what appeared to be commercial business operations occurring along the shoreline off of Honoapiilani Highway. Upon conducting a check of the subject location, I observed approximately 15 kayaks spread out along the sand shoreline. I also observed two tour guides who were later identified as Aaron Longshore and Jeremiah Redins of Kelii's Kayak Tours providing instruction and a safety briefing to an estimated eight clients. I then observed Mr. Chris Stankis of Maui Eco Tours to have two blue kayaks unattended on the shoreline. After monitoring the area for about five minutes Mr. Stankis then escorted a male and female down to the unattended kayaks and after having them sit in the kayaks, he also provided a safety briefing and operating instructions on the sand beach. Upon completion of the safety briefings, each guide pulled the kayaks into the ocean water and the clients climbed on board. Prior to the guides conducting their tours, I made contact with them and identified myself. I then advised them that they were not allowed to set up the kayaks along the shoreline for business operations and that the area could be used for transit purposes from their vehicles/trailers to the water only. Upon discussing possible alternatives with all three guides, I offered the option of possibly only placing one kayak on the beach while they conducted their instruction and safety briefing and once the briefing was completed then they would carry the kayaks directly from their trailers to the water. All three guides agreed that this was an acceptable solution to the problem of the kayak operations taking up the entire beach area and blocking public use and access.

On 10/15/08 at 2:34 p.m., after advising Administrator Morris Atta of my observations and actions, he reminded that per the Chairperson, no aspect of commercial activities for kayak tours and or surf schools could be conducted on unencumbered lands, other than for transiting over the unencumbered lands to get to the water.

On 10/16/08 at 8:20 a.m., I contacted Mr. Brian Yesland (owner of Kelii's Kayaks) and informed him that I was wrong by providing him the direction to utilize one kayak for instruction purposes on the shoreline (unencumbered land). I then advised him that absolutely no commercial business use of public lands were allowed except for transit purposes, unless authorized by the issuance of a permit

or proper disposition. Mr. Yesland acknowledged that he understood my directions to him but reminded me that he disagreed with this rule and that he did not intend to stop his kayak operation. He also informed me that he does possess a permit from Maui County to conduct his kayak operation from Ukunehame Beach Park, which is several miles south of the subject location. I informed him that he would be receiving a Cease & Desist notice advising him to stop utilizing public lands for his commercial business operation.

Attempts were also made to contact Maui Eco Tours Five Star Kayaking via the phone number that was provided by guide Chris Stankis, but all attempts were met with negative results. A Cease & Desist notice will also be sent to Maui Eco Tours via certified mail.

Will the caller agree to allow us to release his/her name and telephone number, so the parties concerned can follow-up with the complaint?

2. Conduct Internal Review.

- a. Locate area on map(s). Attach tax map.
- b. Determine ownership. Findings and source used to verify (attach documents)
The subject area has been identified as State Unencumbered Lands situate within a Conservation District.

3. If area identified is:

Private property

- 1) Notify caller that complaint or problem involves lands privately owned, provide name of owner(s).

Date called: _____ LD Staff name: _____
Spoke to: _____

State lands under DLNR:

- 1) Provide report of what action taken. If site visit conducted, include photographs. Cease and Desist notices will be sent to both kayak tour companies via certified mail, advising them of their prohibited uses of State Unencumbered Lands and of potential fines which could be assessed for these violations.

Note: Mr. Yesland related that he never received the first Cease & Desist notice dated September 26, 2008. The Maui District Land Office also has not received the confirmation returned receipt for this letter.

- 2) If lands are under jurisdiction of non Land Division (e.g., DOFAW, State Parks, etc.), notify applicable DLNR agency, give location information and caller information.

Date called: _____ LD Staff name: _____
Spoke to: _____

State lands under LEO or own d h another government agency

- 1) Notify applicable State agency; give location information and caller information

Date called: _____ LD Staff name: _____
Spoke to: _____

5. Obtain approval from Administrator or Assistant Administrator (or District Land Agent) to close file. [The Administrator's approval will be required if the complaint may lead to a lawsuit, loss of life, etc..]

Recommendation: It is my recommendation that both Maui DOCARE and MDLO continue to monitor the shoreline areas for prohibited uses of Unencumbered State Lands by commercial business operators and to take appropriate actions to regulate these activities. The Maui District Land Office will also work with the County of Maui's Parks and Recreation Department in regulating these activities. Furthermore, if these companies continue to operate enforcement actions should be taken along with the possibility of seizing the equipment under Hawaii Revised Statute 199-7.

Submitted by: Larry Pacheco  Date: 10/16/08

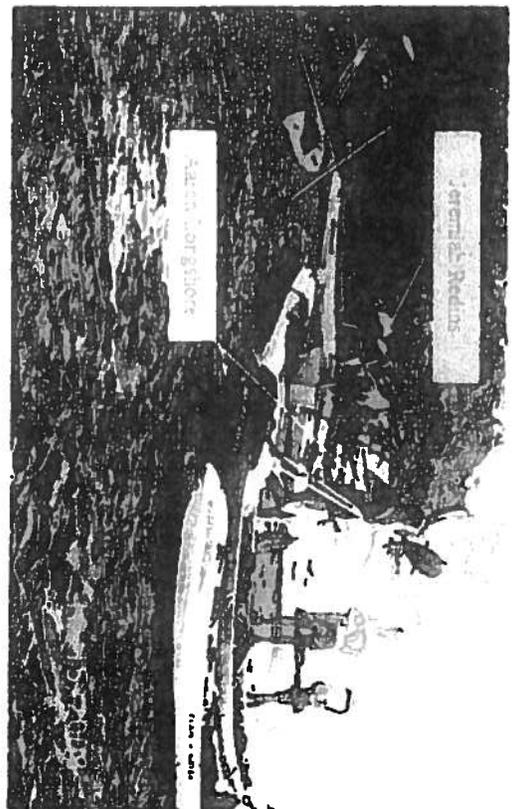
Approved by: _____ Date: _____

6. Maintain this form and all related documents in District files.

Refer to the attached photo report.

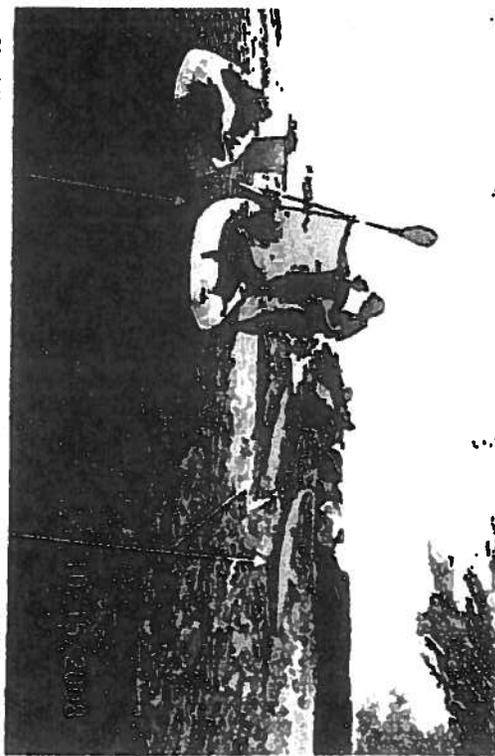
CC: Laura Thielen, Chairperson
Morris Atta, Land Div. Administrator
OCCL
County of Maui, Parks & Recreation, Attn: Lisa Almeida
District File

PHOTO: 2008-10-15



Keali's Kayak Tours set up along Olowalu Beach. Two guides conducting briefings

Prohibited Business Operations, TMK: (2) 4-8 003,001

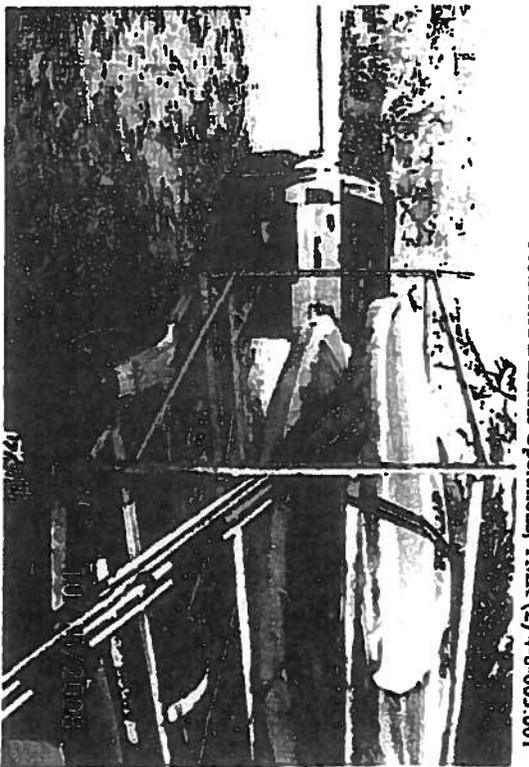
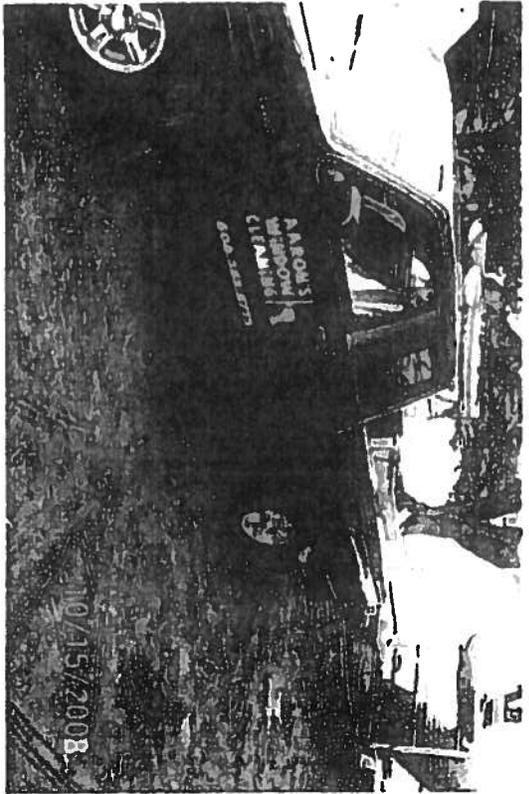


Keali's clients with kayaks.

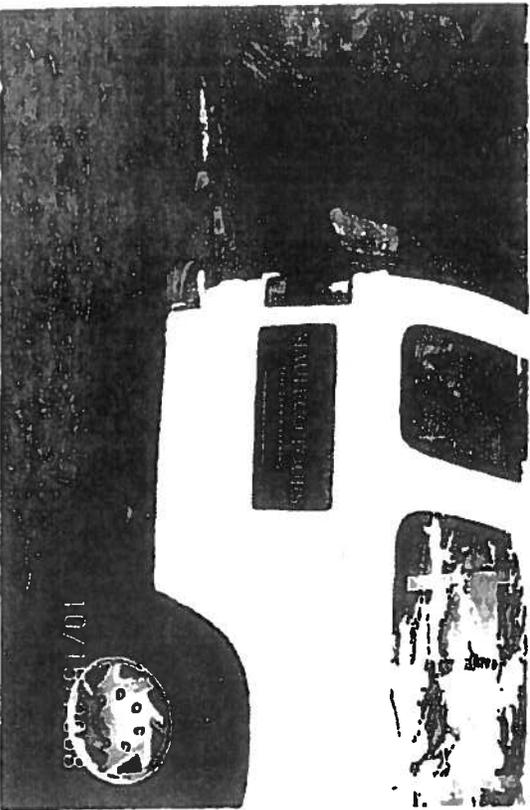
Maui Eco Tours Five Star Kayaking kayakers unattended on the shoreline



Maui Eco Tours Five Star Kayaking instructor Chris Stankis providing instruction to clients on the shoreline



Prohibited Business Operations, TMK (2) 4-8-003.001



Photos of vehicles being utilized to transport equipment to the subject area.

[Home](#) [Specials](#) [Trips](#) [Groups](#) [Contact Us](#) [About Us](#)



Contact Us

Aloha Aina in Hawaiian means a love for nature, earth and of course the islands. Keli's Kayak Tours is one of Maui's most experienced and trusted names. We guide our tours as Hawaiians, with that same love and respect for the ocean. For more than 10 years Keli's Kayak Tours has been providing travelers from around the world the very best kayak and snorkeling tours on Maui.

To insure you obtain your first choice of tour time and day, complete the [reservation form](#) or call us toll free to plan and reserve your tour early.

If you would like to obtain additional information on tours, pricing, options, etc. Please call toll free 888-874-7652 or send us an [email](#). We look forward to having you on the water with us!

Keli's Kayak Tours
 PMB 420, PO Box 959
 Kihei, HI 96753



[email us](#)

Toll Free: 888 874-7652

Local: 808 874 7652

Fax: 808-879-3957

[Download Brochure](#)



Download a copy of our brochure in Adobe Acrobat Reader Format.

[Download](#) (358 KB)

Privacy: All personal information will be kept confidential. We will not share any of your data with other companies. See our [privacy statement](#).

KAYAK & SNORKEL TOURS
 Turtles Guaranteed
 Dolphin & Whale Sightings
 Tropical Fish, Beautiful Scenery
TONS of FUN!

- Small groups
- Experienced personable guides
- Top quality equipment
- Environmentally Friendly
- No experience Necessary

info@keliiskayak.com [? FAQ](#) [Download Brochure](#) [Your Photos](#)

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EXHIBIT "3"

[Home](#) [Specials](#) [Trips](#) [Groups](#) [Contact Us](#) [About Us](#)



Trips

Why a guided tour?

Sure you can rent a kayak on your own but why? Your time on the water is limited. Our tours take the hassle out of your day. We limit our groups to 8 paddlers per guide. Our guide's deliver all equipment to the beach, unload and load, all snorkel gear and refreshments are provided. For individuals without paddling experience our guides will provide you beachside paddling instruction, assist you with your launch and accompany you for the duration providing assistance where needed. We know the weather, water conditions and where the best snorkeling spots are for marine life viewing. Why not get the most from your paddling adventure?



Our tours include:

- Experienced, personable guides with CPR and first aid training all with many years ocean experience, the island's best.
- Beach side safety and paddling instruction from our guides.
- Quality late model sit-on top ocean kayaks.
- Dry bags for small personal items.
- Top quality snorkel equipment and personal flotation device.
- Snacks and beverages on (lunch Included on some tours).

South Shore Turtle Adventure - West Shore Intro - North Shore Explorer

Waterfall Hike & Coral Garden Paddle - Maui Sunset - Paddle Snorkel & Learn to Surf



Slide Show Tour Locations

South Shore Turtle Adventure

Our Signature Tour - Turtle Sightings Guaranteed - Nobody Does It Better!

One of our most popular tours remains one of our best. Your guide will lead you on a leisurely paddle through Makena Bay along it's beautiful coastline with views of Molokini and Haleakala Volcano. You will have ample opportunities for snorkeling over colorful reefs and in Turtle Town with Hawaii's endangered green sea turtles and a variety of colorful marine life. Don't be surprised if you spot dolphins or during the season, possibly encounter humpback whales. This is a great paddling



adventure for ages 5 & up and all abilities, exciting marine life and tons of fun!

 **2 ½ Hour Tour - \$69**

Departure: 7:30 and 11:00 am daily from Makena Landing (check in 15 minutes prior)
Tour Length: 2.5 Hours
Paddling Distance: 2.5 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: snack and beverages
Skill Level: All

 **4 ½ Hour Tour - \$99**

Departure: 7:30 am daily from Makena Landing (check in 15 minutes prior)
Tour Length: 4.5 Hours
Paddling Distance: 3.5 Miles (approximate)
Snorkel Time: approximately 80 minutes (2 reefs)
Includes: Beach lunch, snack & beverages while on water
Skill Level: All

Maui West Shore



The magnificent west shore is known for shallow calm clear water, a delight for paddlers. Enjoy the astounding west shore scenery including the majestic West Maui Mountains and Ukumehame Valley. While in the water you will have chance to snorkel at several prime spots such as Coral Gardens or Olowalu Marine Sanctuary, and experience a variety of marine life over colorful coral reefs including giant sea turtles. This is a convenient tour for those staying in west side hotels and great for all levels of paddlers.

 **2 ½ Hour Tour - \$69**

Departure: 7:30 am and 11:00 am daily from Olowalu (check-in 15 minutes prior)
Tour Length: 2.5 Hours
Paddling Distance: 2.5 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: snack and beverages
Skill Level: All

 **4 ½ Hour Tour - \$99**

Departure: 7:30 am daily from Olowalu (check-in 15 minutes prior)
Tour Length: 4.5 Hours
Paddling Distance: 3.5 Miles (approximate)
Snorkel Time: approximately 80 minutes (2 reefs)
Includes: Beach lunch, snack & beverages while on water
Skill Level: All

Maui North Shore Explorer
 (Tour operates only May 1 - October 15)

Leave from beautiful D.T. Flemming beach park and paddle along Maui's northwestern rugged shorelines few people have the opportunity to experience. A spectacular coastal viewing and snorkeling tour. Honolua Bay, a marine reserve area, offers breathtaking topside and underwater scenery, tons of fish, turtles, coral and great visibility. As an added bonus this tour offers a good chance for dolphin sightings. Because of prevailing winds and wave conditions. This tour operates only May 1 - Sept 30 and is limited to ages 10 and up.





3 Hour Tour - \$79

Departure: 7:30 am daily from D.T. Flemming Beach Park
Tour Length: 3 Hours
Paddling Distance: 3 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: Snack & beverages while on water
Skill Level: All

Maui Sunset Tour



What better way to experience Maui's stunning world class sunsets, than from the ocean. Before the sun dips in the horizon you will paddle along Maui's western seashore offering magnificent vista's of the West Maui mountain range and valley's. The beauty and serenity of being on the water as the sun dips in the Hawaiian sky is a moment you won't want to miss.



1.5 Hour Tour - \$64

Departure: Between 4:00 and 5:30 PM depending on season. Call for exact departure time and location.
Tour Length: 2 Hours
Paddling Distance: 1.5 Miles (approximate)
Includes: snack and beverages
Skill Level: All

Paddle, Snorkel & Learn to Surf
Do it all in a day!

Your morning starts with a surf lesson designed for time surfers. Your instructor will teach you surfing etiquette and wave riding fundamentals. Classes last 2 hours with a maximum group size of 6 to ensure students receive the personal attention they need to develop their surfing skills. We guarantee you will be surfing in one easy lesson your next lesson is free. After surfing, come off the water for a break and a delicious lunch then head out with your kayak guide on a leisurely paddle through Makena Bay along it's beautiful coastline with views of Molokini and Haleakala Volcano. You will have ample opportunities for snorkeling over colorful reefs and in Turtle Town with Hawaii's endangered green sea turtles and a variety of colorful marine life. Don't be surprised if you spot dolphins or during the season, possibly encounter humpback whales. Minimum Age 8 years and up.



6 1/2 Hours - \$139

Departure: Check in 7:15 AM, Makena Landing
Tour Length: 6.5 Hours
Distance: 2 miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: refreshments and snacks on the water and full lunch before surfing. Surf lesson includes surfboard, water booties and rash-guard.
Skill Level: ALL (8 years and up)

Waterfall Hike & Coral Garden Paddle
Do it all in a day!



HIKE MAUI and KELII'S KAYAK have teamed up to offer a day tour that gives you an incredible land and sea experience. Your adventure starts with a morning kayak tour along Maui's majestic West Shore known for it's calm, clear waters and magnificent reefs. We stop to snorkel at some of our favorite spots in the Olowalu Marine Sanctuary where you will view a variety of marine life including Hawaiian Green Sea turtles. After enjoying Maui's ocean beauty, your hike guide will transport you to Maui's lush east side for an easy hike to two waterfalls and pools where there is plenty of time to swim, jump from safe rock ledges. Learn about flora and fauna from your knowledgeable guide. Fun, easy and safe. Great for families. This is a true magical Maui experience. (Includes lunch)

Want more info on the Hike? Check out the [slide show](#)



7 Hours - \$160 This tour requires a minimum of 4 to confirm departure

Departure: 7:30 am (Daily) from Olowalu (check-in 15 minutes prior)

Tour Length: 7 Hours

Distance: 2 mile paddle plus 1 mile hike (approximate)

Snorkel Time: approximately 45 minutes

Includes: refreshments and snacks on the water and full lunch during hike

Skill Level: All

Terms and Conditions

All prices are per person and do not include 4.4% sales tax. Tours take place weather permitting. Departure sites may be substituted depending on water and weather conditions at the discretion of your guide. There are no refunds for cancellations within 24 hours of tour departure.

| | | | |
|---|--|---|---|
| <p>KAYAK & SNORKEL TOURS Turtles Guaranteed! Dolphin & Whale Sightings Tropical Fish, Beautiful Scenery TONS of FUN!</p> | <ul style="list-style-type: none"> • Small groups • Top quality equipment • No experience Necessary | <ul style="list-style-type: none"> • Experienced personable guides • Environmentally Friendly | |
| <p>http://www.keliiskayak.com</p> | <p>? FAQ</p> | <p>Download Brochure</p> | <p>Tour Photos</p> |

Copyright (c) 2002 Keli's Kayak Tours. All Rights Reserved.



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



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

RECEIVED

2013 JUL -8 AM 11:25

PETITION FOR A CONTESTED CASE HEARING

DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

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.

| A. PETITIONER | | |
|---|-----------------------------|------------------------------------|
| (If there are multiple petitioners, use one form for each.) | | |
| 1. Name | Island Adventure Tours, LLC | 2. Contact Person Brian Yesland |
| 3. Address | Mailing: | 4. City Kihei |
| 6. Email | | 5. State and ZIP HI 96753 |
| | | 8. Fax 808-879-3957 |

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

C. SUBJECT MATTER

17. Board Action Being Contested The Board concluded that Petitioner conducted commercial activity on State lands on September 15, 2008 at Olowalu Maui. The Board assessed and suspended fines. Petitioner is contesting the finding that Petitioner was conducting commercial activities and that the Board has jurisdiction over a nearly 5 years old citation.

18. Board Action Date
June 28, 2013

19. Item No.
PSE/13MD 051

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action The Petitioner is the entity that the complaint was filed against and which was assessed the fines. The Petitioner has standing as the accused in this action.

21. Any Disagreement Petitioner May Have with an Application before the Board
The Petitioner does not disagree with the finding that that commercial activity occurred on State unencumbered lands nor has Petitioner violated any other 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 finding of violation and fines.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest
The Petitioner is the party being charged with the violation of a rule that is vague and ambiguous.

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 as the aggrieved party charged with the violation. The Petitioner is a proper party under 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)

[Signature]

Signature

7-5-2013

Date

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
August 23, 2013 J.O.

D-7

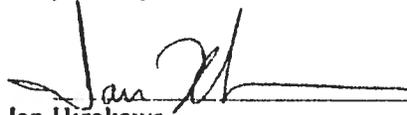
EXHIBIT "B"

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:

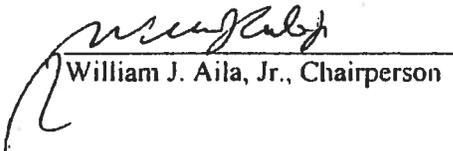
- 1) Grant the petitions and authorize a single contested case consolidating the petitions as to the findings against KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures.
- 2) Authorize appointment of a Hearing Officer to conduct hearings relevant to the petitions as 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

EXHIBIT "A"

D-10

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:

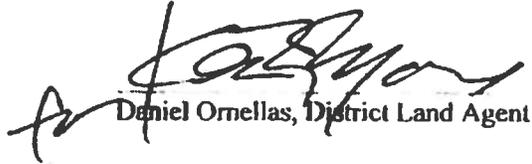
1. Find that KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, violated the provisions of Chapter 171-6, Hawaii Revised Statutes, and Hawaii Administrative Rules 13-221-35, Commercial Activities, by conducting unauthorized commercial activities on unencumbered State 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 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

BLNR - Issuance of Fine
For Unauthorized Commercial
Activities

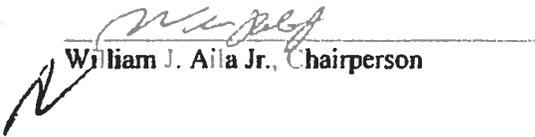
July 12, 2013

Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures,
shall be fined \$1,000 for each day or part thereof that such activities occur.

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, Olowalu



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



EXHIBIT " 1 "

PL 1062



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

Dept. DLNR MAUI
Div. DOCARE

STATE OF HAWAII
INVESTIGATION REPORT

COPY

CONFIDENTIAL 2011 AUG -4 AM 8 35

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

| | | | | | | | |
|---|--|--|--|--|--|---|--|
| 1 CLASSIFICATION LAND MANAGEMENT KAYAKS ON THE BEACH 2 COMPLAINT (Firm Name, # Business) OFC. J REZENTES | | 3 ISLAND MAUI | | 4 DISTRICT LOWALU | | 1 REPORT NUMBER MA-12-080 | |
| 9 ADDRESS | | 6 SEX M | | 7 DOB DNA | | 8 OCCUPATION CREO III | |
| 11 LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET LOWALU BEACH RESERVE | | 10 SCHOOL EMPLOYED/SCHOOL ATTENDING DLNR/DOCARE | | 12 DATE/TIME/DAY OCCURRED 7/17/11 0730 HOURS/SUN | | 13 DATE/TIME REPORTED 7/17/11 0735 HOURS | |
| 14 DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES LOWALU 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, I.D. Characteristics: DNA | |
| 18 REGISTERED OWNER DNA | | 19 REGISTERED OWNER DNA | | 20 REGISTERED OWNER DNA | | 21 REGISTERED OWNER DNA | |

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

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

| 20 SEX | Composite Description | Race | Age | Wt. | Build | Hair | Eyes | Complex. | Birthdate | HF or SSN |
|--------|-----------------------|------|-----|-----|-------|------|------|----------|-----------|-----------|
| | | | | | | | | | | |

21 INVESTIGATION: 1. Insert a synopsis of the crime or incident. 2. Summarize details of the crime or incident. 3. Detail persons from whom statements taken and who took them. 4. Identify additional suspects and witnesses. 5. Identify additional investigation. 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 past 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 Derek Orale Kula HI 96790 (736-MDE). I waited for approximately one hour for the kayak tours to return however, they did not.

| | | | | |
|--|----------------------|--|---|------------------------|
| 22. Name of Investigator REZENTES, Joshua | 23. Badge No. 174 | 24. Date/Time 7/27/11 @ 1105 Hrs | 25. SUPERVISOR APPROVAL WOURDUEX, Howard | 26. Badge No. 248 |
| 27. Status of Report <input type="checkbox"/> Unfiled <input type="checkbox"/> Classified <input type="checkbox"/> Archived/Preserved <input type="checkbox"/> Other/As Noted | | 28. Status of Report <input type="checkbox"/> Archived/Preserved <input type="checkbox"/> Adult <input type="checkbox"/> Juvenile | | |
| 29. Date/Time Reported | | 30. Distribution | | 31. Copying Report No. |

EXHIBIT 2
Pg. 1 of 5

DLNR/DOCARE PHOTOGRAPH REPORT

CASE NUMBER: MA-12-060

CLASSIFICATION: LAND MANAGEMENT

SCENE: OLOWALU BEACH RESERVE

DATE/TIME TAKEN: 07/17/11 0835 HRS

PHOTO TAKEN BY: OFC. J. REZENTES

DESCRIPTION OF PHOTOS:

PHOTO #1 DEPICTS SIGN STATING NO COMMERCIAL ACTIVITY



PHOTO #2 DEPICTS UNKNOWN KAYAK COMPANY WITH TRAILER ATTACHED.

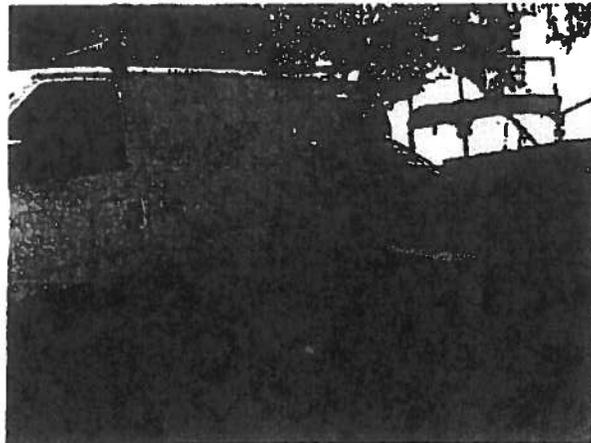
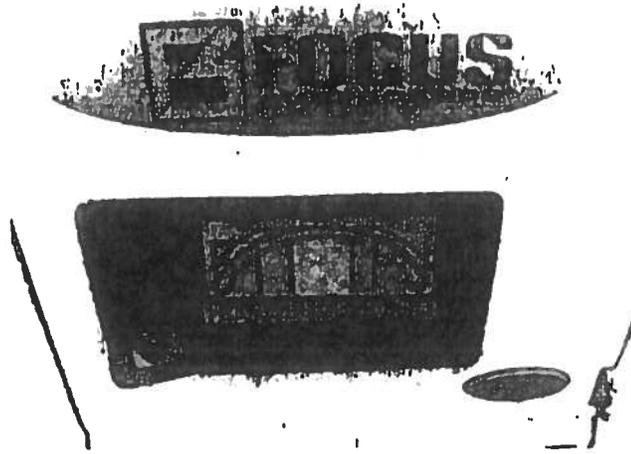


PHOTO #3 DEPICTS LICENSE PLATE OF VAN FROM UNKNOWN KAYAK COMPANY (REGISTERED OWNER IS PAUL NOBLE)



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

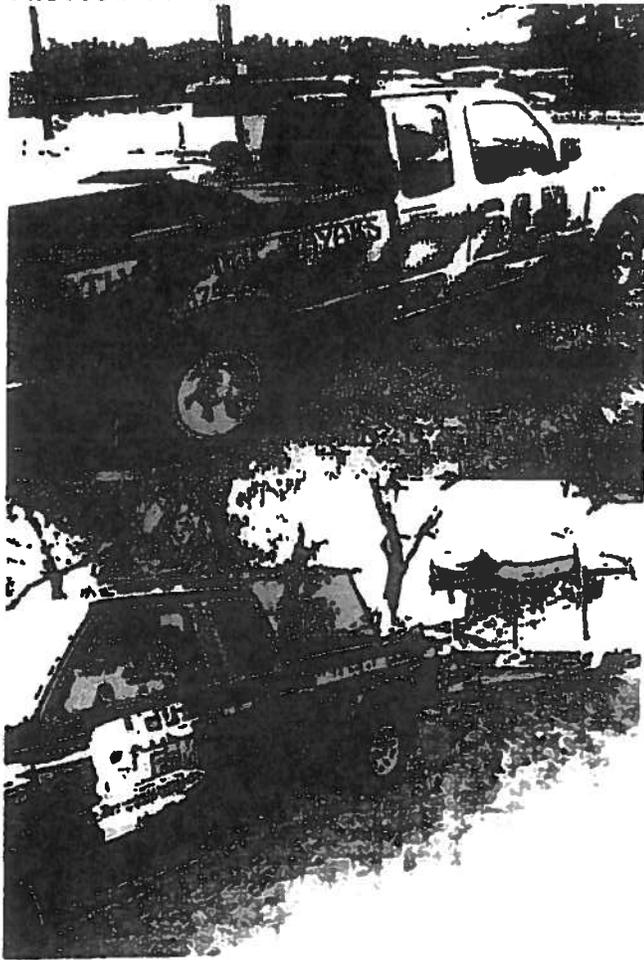


PHOTO #5 AND #6 DEPICTS UNKNOWN KAYAK COMPANY WITH TRAILER DETACHED (REGISTERED OWNER IS DERREK QUALE)



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 Simóncl
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.

EXHIBIT " 3 "



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED

JUL 22 2013

DLNR/APO

| | |
|------------------------------|-----------------|
| 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.

RECEIVED
 LAND DIVISION
 2013 JUL 26 AM 10:09
 DEPT. OF LAND AND NATURAL RESOURCES

(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 | |

| | | | |
|-----------------------------------|---------------------|---|--|
| 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.

Thomas Cole
Petitioner or Representative (Print Name)

Thomas R. Cole
Signature

7-19-2013
Date



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED

JUL 22 2013

DLNR/APO

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

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| | | |
|---|------------------------------------|------------------------------|
| (If there are multiple petitioners, use one form for each.) | | |
| 1. Name South Pacific Kayaks & Outfitters | 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 |

| | | |
|-----------------------------------|---|-------------------------------|
| 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 |
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PSF#13MD-009

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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

PETITION FOR A CONTESTED CASE HEARING

RECEIVED

JUL 22 2013

DLNR/APO

| | |
|------------------------------|-----------------|
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| 3. Address | 4. City Kihei | 5. State and ZIP HI 96753 |
| 6. Email | 7. Phone | 8. Fax 808-270-2699 |

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

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.

Thomas R. Hole
Petitioner or Representative (Print Name)

[Signature]
Signature

7-19-2013
Date

Thomas R. Cole
Attorney at Law

Wailuku, Maui, Hawaii 96793
Phone:
Fax: (808) 244-5460
E-Mail:

November 18, 2013

Via US Mail

Chairperson William J. Aila Jr.
Board of Land and Natural Resources
1151 Punchbowl St., Rm-130
Honolulu, HI 96813

Administrative Proceedings Office
1151 Punchbowl St., Rm-130
Honolulu, HI 96813

Re: Withdrawal of Petition for a Contested Case Hearing\South Pacific Kayaks & Outfitters\Item No. PSF13MD-009

Dear Person:

Your records will reflect that we have filed on behalf of South Pacific Kayaks & Outfitters a Petition for Contested Case Hearing. Based upon our discussions with the Attorney General's Office we have agreed to withdraw the Petition for Contested Case Hearing.

If you have any questions regarding the above do not hesitate to contact this office.

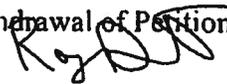
Very Truly Yours,

THOMAS R. COLE
Attorney at Law

TRC/ml

Cc: Dan Morris
Russell Tsuji
Roger Siminot

Withdrawal of Petition Approved By:



Roger Siminot

Street Address -

Wailuku, Maui, Hawai'i 96793

EXHIBIT "C"

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DIVISION
NOV 22 AM 10:15
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