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

November 14, 2014

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

PSF#14MD-171
Maui

Impose a $5,000.00 Fine, an Additional $1,000.00 Per Day Violation, and $220.00 in Administrative Costs Against Maui Kayaks Inc., for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Por. of Keauhou, Kalihi, Waipao, Papaanui, Kaeo, Honuaula, Makawao, Makena, Maui, at TMK: (2) 2-1-007: Seaward of 083 and 093.

PURPOSE:

Imposition of fine and administrative costs for the unauthorized commercial use of State Unencumbered Lands by Maui Kayaks Inc.

LEGAL REFERENCE:

Sections 13-221-35, Commercial Activities, of the Hawaii Administrative Rules, and 171-6(15)(A), Hawaii Revised Statutes, as amended.

LOCATION:

Shoreline area at Honuaula, Makena, Maui at Tax Map Key: (2) 2-1-007: Seaward of 083 and 093.

CURRENT USE STATUS:

The violation was observed to have taken place along the shoreline seaward of the following properties: (2) 2-1-007:

Parcel 083 is State Land, currently vacant and unencumbered.

Parcel 093 is private property currently owned by the ATC Makena N Golf LLC.

RESPONSIBLE:

Trade Name:	Maui Kayaks Inc.
DCCA Registrant Name:	Maui Kayaks Inc.
Owner:	Paul Noble
Address:	P.O. Box 426 Lahaina, HI 96767

VIOLATION:

On August 21, 2014 at approximately 10:20am, Conservation and Resources Enforcement Officer Erik Vuong observed staff members from Maui Kayaks Inc. to be conducting commercial kayak operations along the shoreline to the south of Makena Landing. Per Officer Vuong's report, he observed instructors James Adkins and Corey Laskoskie at the subject location with numerous rental kayaks lined up along the shoreline. Vuong monitored the operation for approximately thirty minutes and was able to observe both employees pulling returning customer kayaks up out of the water and placing them along the shoreline where they were stored as the employees interacted with their clients. Vuong also indicated that tables were set up on the beach area where food was provided for the returning customers.

Upon making contact with Adkins and Laskoskie Officer Vuong inquired if they had a permit to operate their commercial operation at the subject location. Officer Vuong was provided two County of Maui Commercial Ocean Recreational Activities Permits. The first permit (#20140078) was for Hanakaoo County Beach Park and the second permit (#20140077) was for DT Fleming County Beach Park. Neither employee was able to provide any permit or authorization for the use of the subject area for their commercial business operation.

Upon being advised of the observed violation, both instructors informed Officer Vuong that they were instructed by the owner Mr. Paul Noble to utilize the subject location to conduct kayak lessons on the beach and that if they were ever contacted by any DOCARE officers, they were to inform the officer(s) that they had the right to conduct their business at this location. Refer to Officer Erik Vuong's investigation report (15-0100-MA) for his complete statement, observations and actions taken. Report attached as Exhibit 1.

Previously documented warning and complaints against Maui Kayaks Inc. are listed below:

Complaint: 8/29/2013 for Commercial Activities @ Olowalu. Maui Kayaks Inc. employee Mr. James Adkins was observed providing lessons and a safety briefing to clients along the shoreline (State unencumbered land). This violation was taken to the Board of Land and Natural Resources for the issuance of fines and administrative fees. Per Mr. Noble's request, the BLNR approved a contested case hearing for the imposition of a $1,000.00 fine and payment of $580.00 in administrative fees. On

December 13, 2013, under agenda Item D-23, the BLNR approved staff's recommendation to impose a $1,000.00 fine and $580.00 in Administrative Cost against Maui Kayaks Inc. Due to Mr. Noble's request for a contested case hearing which has not taken place to date, a final disposition for the reported violation has not been completed.

Complaint: 8/11/2011 for Commercial Activities @ Olowalu, a warning was issued to the instructor John Hess and owner Paul Noble was contacted and informed of the violation. Mr. Noble related that he would inform his staff to only transit the shoreline and conduct no briefing.

Complaint: 8/12/2008 for Commercial Activities @ Olowalu shoreline, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Ken Bode for conducting commercial activities (kayak tours) on state land. Report number MA-09-249.

Complaint: 5/1/2008 for Commercial Activities @ Makena, Maui. A warning was issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong four conducting commercial operations (kayak tours) on state land. Report number MA-08-1289.

Complaint: 3/22/2008 for Commercial Activities @ Makena, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong for conducting commercial operations (kayak tours) on state land. Report number MA-08-1062.

Cease & Desist Notice: August 26, 2011 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities.

Cease & Desist Notice: March 24, 2008 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities.

Cease & Desist Notice: Refer to cease and desist notice dated April 7, 2008 which was sent to Maui Kayaks Inc. via certified mail related to unauthorized commercial activities and business operations on State lands.

REMARKS:

Staff feels the assessment of the maximum $5,000.00 fine is reasonable given Maui Kayaks Inc.'s history of violations. An additional $1,000.00 per day per violation fine for each day in which the violation persists is also applicable as Maui Kayaks Inc. has been issued verbal and written warnings to cease its commercial operations on State unencumbered lands. A previous board decision was made at which time Mr. Noble was in attendance. It is our request that the maximum fine be assessed as it will serve as a deterrent to future unauthorized activities by Maui Kayaks Inc. and other commercial operators.

Staff has been working with the County of Maui's Department of Parks and Recreation 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. 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's, Department of Parks and Recreation. The Maui District Land Office has been dealing with the problem of commercial operators who, after obtaining a C.O.R.A permit, are now moving their business operations out of designated county park facilities and onto adjacent State unencumbered lands. Their choices to move from an assigned permitted area are usually due to changes in weather conditions which negatively impact their tour operations, or because of carrying capacity problems at the assigned and permitted park locations. Also, note that Mr. Paul Noble has attended and completed the C.O.R.A permitting class, which consists of a segment from the Department of Land and Natural Resources, Land Division which specifically addresses unauthorized commercial activities on the shoreline and State unencumbered land.

The Maui District Land Office continues to receive numerous complaints from the public and the Division of Conservation and Resources Enforcement, with regards to 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 the water portion of their activity. 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) - Investigation report documented by Officer Erik Vuong. Report number 15-0100-MA

Exhibit (2) - Previously approved board submittal dated September 27, 2013, agenda Item D-10. Included is DOCARE report referencing a warning issued to Maui Kayaks Inc. at the subject location dated 3/23/2008. Report number MA-08-1062, violation occurred on 3/22/2008 at 7:30am.

Exhibit (3) - Board submittal dated December 13, 2013, Item D-23, Request for petition for contested case hearing by Maui Kayaks Inc.

Exhibit (4) - Map of the subject area where the recent violation occurred.

RECOMMENDATION: That the Board:

1. Find that Maui Kayaks Inc. 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 $5,000.00, an additional $1,000.00 per day per violation and $220.00 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 Maui Kayaks Inc., shall conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, Maui Kayaks Inc. shall be fined up to $10,000.00 for a second violation and $1,000 for each day or part thereof that such activities occur per Hawaii Revised Statutes 171-6(15)(B).

Respectfully Submitted,

Larry Pacheco, Land Agent

APPROVED FOR SUBMITTAL:

William J. Aila Jr., Chairperson

FIS TWO Copy to LAND DIV. 9-2-14

CONFIDENTIAL

State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION #	District	Lead Investigator	Report Status	Key Report
15-0100-MA	Honuaula	Vuong, Erik	In Progress	[X] Yes [ ] No
Date/Time Reported	**Location**	**Classification**		**Connecting Reports**
08/21/2014 10:20AM	Makena Landing	Commercial Activity on State unencumbered land		

RECEIVED MAUI DISTRICT 2014 SEP 1 8 AM 8:00

Investigation Report

BASIC

1. CLASSIFICATION	2. SOURCE
Commercial Activity on State unencumbered land	On Beat

3. COMPLAINANT'S NAME	4. SEX	5. RACE	6. AGE	7. BIRTH DATE	8. OCCUPATION
Erik Vuong					

9. ADDRESS	10. PLACE EMPLOYED/SCHOOL ATTENDING	11. HOME	12. WORK	13. CELL

14. LOCATION OF INCIDENT/INTERSECTING STREET	15. DATE/TIME OCCURRED	16. DATE/TIME REPORTED
Unencumbered land just south of Makena Landing	08/21/2014 10:20AM	08/21/2014 10:20AM

17. VEHICLES	18. PEOPLE	19. PROPERTY	20. ARRESTS	21. CITATIONS	22. PHOTO REPORTS
-	-	-	-	-	-

VEHICLES

23. TYPE	24. YEAR	25. MAKE	26. MODEL	27. COLOR	28. LICENSE / HA No.	29. LENGTH	30. STOLEN

31. REGISTERED OWNER	32. ADDRESS	33. HOME	34. WORK	35. CELL

36. NOTES

37. TYPE	38. YEAR	39. MAKE	40. MODEL	41. COLOR	42. LICENSE / HA No.	43. LENGTH	44. STOLEN

45. REGISTERED OWNER	46. ADDRESS	47. HOME	48. WORK	49. CELL

50. NOTES

PEOPLE

51. NAME	52. SEX	53. RACE	54. AGE	55. BIRTH DATE	56. OCCUPATION
Paul NOBLE	Male	White			Owner

57. CATEGORY	58. ADDRESS	59. HOME	60. WORK	61. CELL
Suspect	Kihei, HI, 96753			

62. NAME	63. SEX	64. RACE	65. AGE	66. BIRTH DATE	67. OCCUPATION
James ADKINS	Male	White			Canoe Instructor

68. CATEGORY	69. ADDRESS	70. HOME	71. WORK	72. CELL
Suspect	Lahaina, HI, 96761			

73. NAME	74. SEX	75. RACE	76. AGE	77. BIRTH DATE	78. OCCUPATION
Corey LASKOSKIE	Male	White			Canoe Instructor

79. CATEGORY	80. ADDRESS	81. HOME	82. WORK	83. CELL
Suspect	Kihei, HI, 96753			

SYNOPSIS

84. SYNOPSIS

On 08/21/2014 at approximately 1020 hours, Maui Kayaks was observed to be operating a commercial activity (kayak operation) within the jurisdiction of the State unencumbered land near Makena Landing. Maui Kayaks employees James ADKINS and Corey LASKOSKIE had placed numerous kayaks along the shoreline and had set up tables to feed their customers. Maui Kayaks (C/O Paul NOBLE) has been warned in the past for the same violations (HAR 13-221-35). Refer to report #MA-08-1289. Maui Kayaks continue to operate at this location in defiance of recent civil administrative fines imposed against the company.

TMK: (2) 2-1-007: seaward of 083 & 092

WRITER

85. REPORT WRITTEN BY	86. BADGE No.	87. DATE/TIME WRITTEN	88. SUPERVISOR APPROVING	89. DATE/TIME APPROVED	90. BADGE No.
Erik Vuong	179	08/22/2014 11:11AM	John Yamamoto	8-27-14 1622hrs	235

91. DISPOSITION

EXHIBIT "1"

INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT
15-0100-MA	Honuaula	Erik Vuong	[X] Yes [ ] No
DATE / TIME REPORTED	**LOCATION**	**CLASSIFICATION**	**CONNECTING REPORT(S)**
8/21/2014 10:20:00 AM	Makena Landing	Commercial Activity on State unencumbered land	

Report Type: [ ] Continuation of Report [X] Supplemental [ ] Follow Up
Date/Time Written: 08/22/2014 / 0950
Written By: Vuong, Erik

Report

SYNOPSIS:
On 08/21/2014 at approximately 1020 hours, Maui Kayaks was observed to be operating a commercial activity within the jurisdiction of the State of Hawaii unencumbered land. Maui Kayaks has been previously warned for the same violations. Investigation referred to Land Division with recommendation to be forwarded to the Board of Land and Natural Resources for a civil assessment against Maui Kayaks.

ASSIGNMENT:
I am presently assigned to the Department of Land & Natural Resources (DLNR), Division of Conservation and Resources Enforcement (DOCARE), assigned to the Maui Division, Maui County. On 08/21/2014 at approximately 1020 hours, I was on routine patrol in full uniform along the Makena shorelines.

SCENE:
The scene in this case is located in the census of Wailuku, in the County Maui. The location of this violation occurred on the beach portion of the State unencumbered land, below the high water, just south of Makena Landing.

OBSERVATION:
While on patrol, I observed numerous kayaks lined up along the shoreline and there were additional people returning to the shore on kayaks. There was a white van with a trailer parked along the roadway with marking identifying that it belongs to Maui Kayaks. There was another truck parked nearby also pulling a trailer belong to Maui Kayaks. I observed one of the male subjects, later identified as Corey LASKOSKIE, pulling the kayak to shore and leaving it there. LASKOSKIE and another male subject later identified as James ADKINS also had tables set up on the beach to provide food for their returning customers. I monitored LASKOSKIE and ADKINS for approximately 30 minutes while they pulled the returning kayaks to shore, leaving it unattended while they interacted with their customers. They made no attempt to put their kayaks away on their trailer which was parked along the roadway.

CONTACTS:
I made contact with ADKINS and LASKOSKIE and identified my purpose and intentions. I inquired if they were in possession of any State or county permit authorizing them to conduct their activity at this location. ADKINS provided two CORA permits (#20140078 – Hanakaoo Park and #20140077 – DT Fleming Beach Park) but did not have any permits for this location. They were advised of the observed violations and they both related that their employer, Paul NOBLE instructed them to come to this location to conduct the kayak lessons on the beach and that if they were contacted by any DOCARE officers that they have a right to conduct their business at this location. I informed them that the utilization of the State unencumbered land for commercial purpose was illegal and that Maui Kayaks has been previously warned (Refer to report #MA-08-1289) and a civil assessment was imposed against the business for the same violations. ADKINS and LASKOSKIE both advised that they were just following orders from their employer.

PHOTO REPORT:
Refer to the attached photo report.

DISPOSITION:
Forwarded to Land Division with recommendation for this investigation be referred to the Board of Land and Natural Resources to impose a civil assessment against Maui Kayaks.

Vuong, Erik	179	08/22/2014 / 0950
Officer	Badge No.	Date / Time

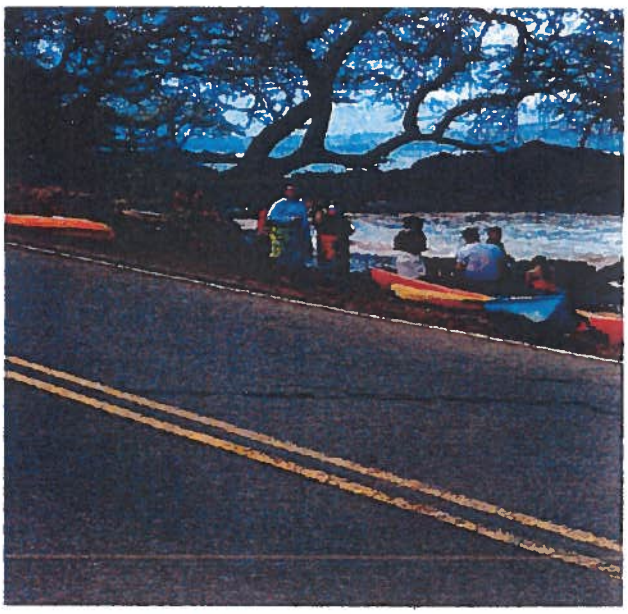
INVESTIGATION #	DISTRICT	LEAD INVESTIGATOR	KEY REPORT
15-0100-MA	Honuaula	Erik Vuong	[X] Yes [ ]
DATE / TIME REPORTED	**LOCATION**	**CLASSIFICATION**	**CONNECTING REPORT(S)**
8/21/2014 10:20:00 AM	Makena Landing	Commercial Activity on State unencumbered land	

Report Description: Commercial Activity at Makena shoreline
Date/Time Taken: 08/21/2014 / 1020
Taken By: Vuong, Erik
Scene: Makena shoreline

Equipment: Olympus Camera
Weather Conditions: Clear
Lighting: Daylight
Focus: N/A

1 Photo of the kayaks and people on the shoreline

2 A table was set up under the tree to feed the customers



3 Cody LASKOSKIE in red/black with customer

4

D-10

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

September 27, 2013

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

PSF#13MD-157
Maui

Impose a $1,000.00 Fine and $580.00 in Administrative Costs Against Maui Kayaks Inc., 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 State Unencumbered Lands by Maui Kayaks Inc.

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 land, currently vacant and unencumbered.

RESPONSIBLE:

Trade Name:	Maui Kayaks Inc.
DCCA Registrant Name:	Maui Kayaks Inc.
Owner:	Paul Noble
Address:	
	Lahaina, HI 96767

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 27, 2013 GO

D-10

EXHIBIT "2"

VIOLATION:

On August 29, 2013 at 7:35 a.m., Mr. James Adkins of Maui Kayaks Inc. was observed conducting commercial business operations on the shoreline at Olowalu beach. Mr. Adkins, an instructor and tour guide with Maui Kayaks Inc., was observed providing lessons and a safety briefing to five clients. At the time, a total of four kayaks were lined up along the upper portion of the shoreline (State unencumbered land) to the rear of a trailer which had been modified for transporting kayaks. The operation and safety briefings lasted for approximately fifteen minutes. Upon completion of the briefing, the instructor pulled each kayak down to the water's edge and assisted the clients in launching their kayaks once they were seated.

Proper signage exists onsite notifying beachgoers that commercial activities are prohibited. Refer to the attached photo report (Exhibit A).

Previously documented warning and complaints against Maui Kayaks Inc. are listed below:

Complaint: 8/11/2011 for Commercial Activities @ Olowalu, a warning was issued to the instructor John Hess and owner Paul Noble was contacted and informed of the violation. Mr. Noble related that he would inform his staff to only transit the shoreline and conduct no briefing.

Complaint: 8/12/2008 for Commercial Activities @ Olowalu shoreline, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Ken Bode for conducting commercial activities (kayak tours) on state land. Report number MA-09-249.

Complaint: 5/1/2008 for Commercial Activities @ Makena, Maui. A warning was issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong for conducting commercial operations (kayak tours) on state land. Report number MA-08-1289.

Complaint: 3/22/2008 for Commercial Activities @ Makena, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong for conducting commercial operations (kayak tours) on state land. Report number MA-08-1062.

Cease & Desist Notice: August 26, 2011 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities.

Cease & Desist Notice: March 24, 2008 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities.

Cease & Desist Notice: Refer to cease and desist notice dated April 7, 2008 which

was sent to Maui Kayaks Inc. via certified mail related to unauthorized commercial activities and business operations on State lands.

REMARKS:

Staff feels the assessment of a fine is reasonable given Maui Kayaks Inc.'s history of violations. Verbal warnings have been issued to staff members and owner Mr. Paul Noble as well as multiple cease and desist notices which were sent to management via certified mail. It is our intent that a fine will serve as a deterrent to 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 commercial operators who, after obtaining a C.O.R.A permit, 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. Also note that Mr. Paul Noble has attended and completed the C.O.R.A permitting class, which consists of a segment from the Department of Land and Natural Resources, Land Division which specifically addresses unauthorized commercial activities on the shoreline and State unencumbered land.

The Maui District Land Office 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 the water portion of the surf lesson. 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 (A) - Photo of posted sign indicating no commercial activities at the subject location.

Exhibit (B) - Staff report (Complaint) dated 8/30/2013, submitted by Land Agent Larry Pacheco.

Exhibit (C) - Letter from the Department of Parks & Recreation dated September 4, 2013, confirming that Mr. Paul Noble attended the C.O.R.A training class on April 21, 2010 and the refresher class in early 2012.

RECOMMENDATION: That the Board:

1. Find that Maui Kayaks Inc. 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 $580.00 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 Maui Kayaks Inc., shall conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, Maui Kayaks Inc. 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

Land Board Meeting: September 27, 2013; D-10: Approved as submitted.

Oral request for a contested case hearing was made prior to the end of the meeting.

Olowalu Beach Reserve signs listing prohibited activities which include

No Commercial Activities.

EXHIBIT - A

LAND DIVISION

COMPLAINT FORM

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

Date/Time Of Call: 8/29/2013, 7:35 a.m.
Received By: L. Pacheco

Name of Caller: Larry Pacheco (Land Agent) Telephone:
Address/Location: Olowalu, Unencumbered State Land
Tax Map Key: (2) 4-8-003:001

Additional Information (fully describe the complaint or problem):
On 8/29/2013 at 7:35am, while conducting checks of State lands in the Olowalu area, I observed several kayaks lined up along the upper portion of the shoreline on unencumbered State land with a group of people standing around the kayaks. Upon approaching the group I observed a male individual providing instruction to five people who were standing above the kayaks with paddles in their hands and wearing life jackets. I monitored the instructor as he explained paddling techniques and a short safety briefing. After the instructions were completed, the instructor / guide then pulled each kayak into the water and assisted the clients with launching off the beach.

Contact was then made with the instructor who identified himself as James Adkins of Maui Kayaks. I informed Mr. Adkins of the rules related to conducting commercial activities on state unencumbered land under Hawaii Administrative Rule 13-221-35. Mr. Adkins related that he was not aware that he was violating any laws or rules and was never briefed by his employer Mr. Paul Noble that he was not allowed to conduct the lessons and or briefings on the shoreline.

Refer to the attached photo report.

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 was identified and ownership confirmed via Tax Map and aerial overview.

State lands under DLNR:

   a. Provide report of what action taken. If site visit conducted, include photographs.

Exhibit B

Mr. Adkins was issued a verbal warning and informed that commercial activities were not allowed on the shoreline and unencumbered state lands without a permit from the board or its authorized representative.

On 8/30/2013, at 11:50am, I contacted Maui Kayaks owner Mr. Paul Noble at 874-4000. During our conversation I did inform him of my contact on the previous morning with his instructor Mr. Adkins. Mr. Noble advised me that he was not aware that his instructor had not been briefed on the rules related to operating on state land. He indicated that they have to provide a safety briefing to prevent any injuries while out in the water and that he was sure the state would not want to be held responsible if something did happen to their clients while out on the water because they were unable to conduct a briefing before entering the water due to a state rule. I then informed Mr. Noble that this location is not a permitted site for commercial operations to take place and therefore, the state is not liable for any part of his business operation.

A file review was also conducted with regards to previous documented warnings and the following had been issued to Mr. Noble:

Complaint: 8/11/2011 for Commercial Activities @ Olowalu, a warning was issued to the instructor John Hess and owner Paul Noble was contacted and informed of the violation. Mr. Noble related that he would inform his staff to only transit the shoreline and conduct no briefing (Exhibit 1)

Complaint: 8/12/2008 for Commercial Activities @ Olowalu shoreline, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Ken Bode for conducting commercial activities (kayak tours) on state land. Report number MA-09-249 (Exhibit 2).

Complaint: 5/1/2008 for Commercial Activities @ Makena, Maui. A warning was issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong four conducting commercial operations (kayak tours) on state land. Report number MA-08-1289 (Exhibit 3).

Complaint: 3/22/2008 for Commercial Activities @ Makena, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong for conducting commercial operations (kayak tours) on state land. Report number MA-08-1062 (Exhibit 4).

Cease & Desist Notice: August 26, 2011 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities (Exhibit 5).

Cease & Desist Notice: March 24, 2008 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities (Exhibit 6).

Cease & Desist Notice: Refer to cease and desist notice dated April 7, 2008 which was sent to Maui Kayaks via certified mail related to unauthorized commercial activities and business operations on State lands (Exhibit 7).

3. 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: Seek Board approval for the issuance of fines for the repeated violation by Maui Kayaks Inc. for violating Hawaii Administrative Rule 13-221-35 Commercial Activities. Staff will document board submittal and request enforcement of rule and assessment of $1,000.00 fine and administrative fees.

   Submitted by: Larry Pacheco Date: 8/30/2013

   Approved by: _____ Date: _____

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

Cc: Land Division Administrator Russell Tsuji
Maui DOCARE

Photos taken: 8/29/2013

Maui Kayaks Inc. , Unauthorized Commercial Activities

Maui Kayak's instructor James Adkins depicted in photos 1, 2, and 3 providing lessons to clients along the State shoreline and unencumbered land.

View of parking area just below Honoapiilani Highway at the subject location.

online Live Chat Technical Support

MAUI KAYAKS INC.

DOMESTIC PROFIT CORPORATION

GENERAL INFO ANNUAL FILINGS OFFICERS STOCKS TRADE NAMES/MARKS OTHER FILINGS BUY AVAILABLE DOCS

General Info

VIEW AND PRINT COMPANY INFO

Purchase a Certificate of Good Standing for this business:

ELECTRONIC $7.50

PRINTED $7.50

Add to Cart

MASTER NAME	MAUI KAYAKS INC.
BUSINESS TYPE	Domestic Profit Corporation
FILE NUMBER	208048 D1
STATUS	Active
PURPOSE	OCEAN RECREATION TOUR BUSINESS
PLACE INCORPORATED	Hawaii UNITED STATES
REGISTRATION DATE	Apr 30, 2004
MAILING ADDRESS	LAHAINA, Hawaii 96767 UNITED STATES
TERM	PER
AGENT NAME	PAUL NOBLE
AGENT ADDRESS	LAHAINA, Hawaii 96767 UNITED STATES

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LAND DIVISION

COMPLAINT FORM

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

Date/Time Of Call: 8/11/2011, 7:55 a.m.
Received By: Larry Pacheco

Name of Caller: On View Telephone: _____
Address/Location: Olowalu Beach
Tax Map Key: (2) 4-8-003:001

Additional Information (fully describe the complaint or problem):
On 8/11/2011 at 7:55 a.m., I observed several different kayak tour groups along the shoreline and within the water at Olowalu Beach. The entire parking area was found to be full of vehicles from tourist participating in the kayak tours as well as multiple tour company's commercial vehicles with large trailers attached to them that are used to transport the kayaks. After stopping and monitoring the activities taking place along the shoreline and within the beach reserve, I noticed that three larger tour groups had already left the shoreline and had begun their kayak tours out within the water. I then observed four orange kayaks still laid out along the sand shoreline and a group of people standing to the rear of a white van within the parking area that had a Maui Kayak logo painted on the side of it. After being issued snorkel gear from an individual who was later identified as John Hess, the group moved down to the shoreline where the four kayaks were laid out. Once at the kayaks, Mr. Hess began to give the group a safety briefing and instruction on how to paddle and operate the kayaks. The group consisted of five adults and three children. The instruction and safety briefing along the shoreline went on for approximately 35 minutes. Mr. Hess then pulled each kayak down the shoreline and into the water where his clients then got into the vessels and paddled out to the nearby reef. Contact was then made with Mr. Hess as he was about to pull his guide kayak down the beach. Mr. Hess informed me that the company he works for (Maui Kayaks) does have a County of Maui C.O.R.A permit to conduct kayak tours. He also stated that he attended the C.O.R.A class approximately a year ago. He then stated that he normally conducts tours in the Makena area and rarely comes out to the Olowalu site because of the large amount of tour groups and commercial operators who operate from this location.

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? yes

2. Conduct Internal Review.

   a. Locate area on map(s). Attach tax map.
   b. Determine ownership. Findings and source used to verify (attach documents):

EXHIBIT "1"

The subject area where the commercial activities were observed to be taking place is state land. The area is also designated as a beach reserve.

3. If area identified is:

Private property

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:

a. Provide report of what action taken. If site visit conducted, include photographs.
Refer to the attached photo report of the commercial activities taking place on state land without a permit or authorization. Mr. Hess was also advised that the use of the shoreline for storage and conducting his instruction and safety briefings were not allowed. He was informed that he was only allowed to use the beach and shoreline area for transit from his vehicle to the water. No lessons or storage at all should be conducted within the beach reserve. Mr. Hess acknowledged that he understood and stated that he was not aware of these rules as he observed all the other tour companies doing the same thing he did.

Maui Kayaks main office was also contacted via phone, Manager Paul Noble was informed of the above mentioned prohibited activities that were observed. He related that he would speak to his staff and try get them to use the shoreline area for transit purposes only, no instruction or safety briefings.

b. 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:

Notify applicable State agency; give location information and caller information

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

4. 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: Maui District Land Office will attempt to issue a cease and desist notice to Maui Kayaks from the Chairperson's office. We will then serve the notice to the company and inform them that they can only conduct their commercial operations in the designated park areas for which their C.O.R.A permits them to operate out of. Maui DOCARE will also be advised of this complaint and asked to help with monitoring the shoreline and other state lands for unauthorized commercial activities.

   This is an ongoing problem at this location with multiple tour companies using this site. Follow up checks of the area will continue to be conducted in an attempt to stop the unauthorized commercial activities from taking place.

   Submitted by: Larry Pacheco Date: 8/15/2011

   Approved by: _____ Date: _____

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

CC: Maui DOCARE (information purposes only)

Photos taken: 8 11 2011

Maui Kayaks, Commercial Acts. Olowalu

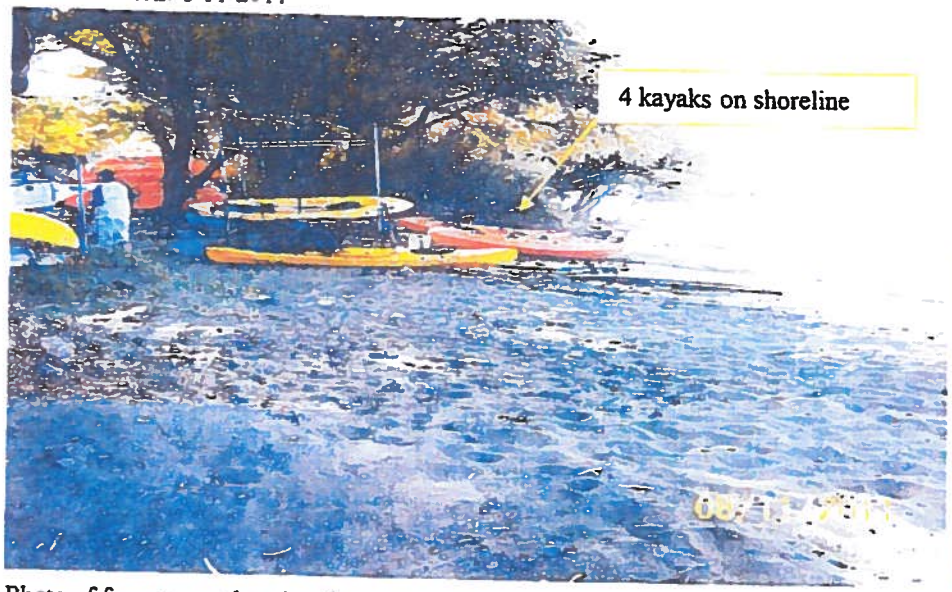
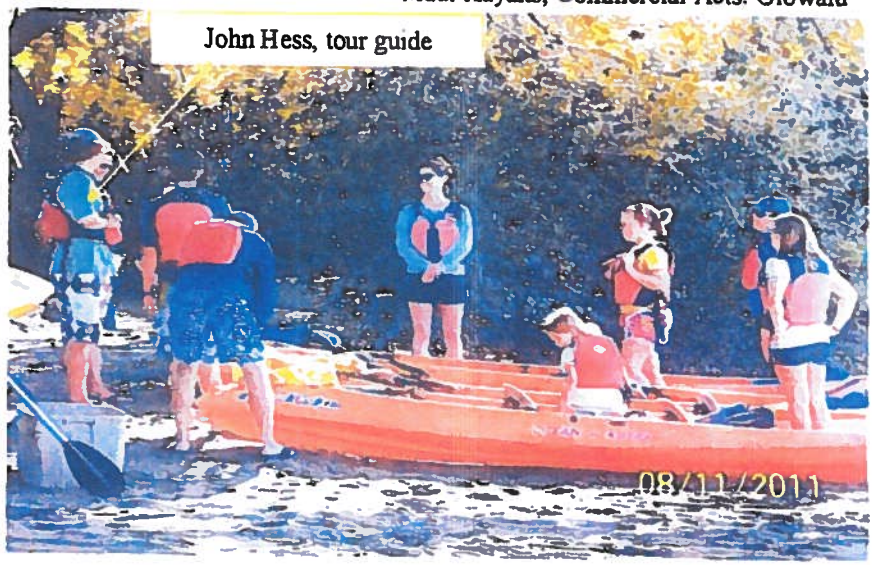


Photo of four orange kayaks placed on shoreline while guest are fitted with safety gear at a parked van.



Guest being briefed by guide John Hess on the sand shoreline within the State Beach Reserve.

Photos of tour guide John Hess providing safety briefing and instruction to guest on the shoreline.

Photos taken: 8 11 2011

Maui Kayaks, Commercial Acts. Olowalu

Additional photos of tour guide John Hess providing instruction and safety briefing while encumbering a portion of the state beach reserve for his commercial activity.

Photos of Maui kayaks equipment van and trailer.

COPY DOCARE-

Dept. DLNR
Div. DOCARE

RECEIVED MAUI DISTRICT LAND DIVISION 2008 SEP 16 PM 1:25

STATE OF HAWAII
INVESTIGATION REPORT

TMK:(2) 4-8-003:001

1. REPORT NUMBER	MA 09-249
2. INVESTIGATOR	BODE, KENNETH JR.

CLASSIFICATION: LD-LAND MANAGEMENT- COMMERCIAL OPERATOR	3. ISLAND: MAUI	4. DISTRICT: LAHAINA	
5. COMPLAINANT (Firm Name, if Business): STATE OF HAWAII	6. SEX RACE AGE: M	7. D.O.B.	8. OCCUPATION: DOCARE
9. ADDRESS: KAHULUI, HI 96732	10. SCHOOL EMPLOYED/SCHOOL ATTENDING	Res. Ph.	Bus. Ph
11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET: ON STATE PROPERTY, OFF AND MAKAI OF HONOAPIILANI	12. DATE/TIME/DAY OCCURRED: 8-12-08/0745/TUESDAY	13. DATE/TIME REPORTED: same	
14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES		15. HOW REPORTED: ON BEAT	

16. VEHICLE INVOLVED	Year	Make	Model	Color(s)	License No.	I.D. Characteristics
					590 MCX	

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
MAUI KAYAKS		O	S	Kihei, HI 96753		
		O				
		O				

20. SEX Composite Description Race	Age	Wt.	Build	Hair	Eyes	Complex	Clothes/I.D. Characteristics

21. INVESTIGATION: 1. Insert a synopsis of the crime of 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 Tuesday the 12 of August 2008, at approximately 0745 hours I made contact with a commercial Operator on the beach in the Olowalu area and advised him of the new permit requirement, call owner left message.

ASSIGNMENT/SCENE:

At the date and time stated above I was assigned to patrol and checks by FS C. YAMAMOTO, interview occurred on the beach off and makai of Honoapiilani Hwy in the Olowalu area.

INFORMATION/EDUCATION:

Waiting till the Maui Kayaks guide was done giving his safety briefing I informed him about the new permit requirement and asked if he was aware of the fact, he stated that the owner told him nothing about the new reqirement, and he did not have a permit.

OWNER CALLED:

I called the business office of MAUI KAYAKS, and left a message as no one answered the phone after several attempts.

CONTACT MADE:

I later received a call from Paul NOBLE who stated he was owner, I told them to call the State Land Div. for information, and that a report would be made and sent to the DLNR Chairwomen; Laura THIELEN for further review.

DISPOSITION:

Pending
Records

22. REPORT WRITTEN BY	Badge No.	Date/Time	23. SUPERVISOR APPROVING	Badge No
Kenneth Bode, Jr.	146	8-12-2008/1130		

24. DISPOSITION ☐ Unfounded ☐ Citation/No. ☐ Arrested/Prosecuted ☐ Other/No Arrest ☐ Arrested/No Prosecution ☐ Adult ☐ Juvenile

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

EXHIBIT "2"

RECEIVED
MAUI DISTRICT
LAND DIVISION
2008 MAY -9 AM 9:06

DOCARE-6

STATE OF HAWAII
INVESTIGATION REPORT

Dept. DLNR
Div. DOCARE

1. REPORT NUMBER	MA-08-1289
2. INVESTIGATOR	VUONG, ERIK
CLASSIFICATION	LD - COMMERCIAL ACTIVITY ON STATE UNENCUMBERED LAND
3. ISLAND	MAUI
4 DISTRICT	WAILUKU
5 COMPLAINANT (Firm Name, If Business)	ERIK VUONG
6 SEX / RACE / AGE	M
7. DOB	
8. OCCUPATION	CREO II
9. ADDRESS	KAHULUI, HI 96732
10. SCHOOL EMPLOYED/SCHOOL ATTENDING	DLNR
Res. Ph. / Bus Ph.	
11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET	MAKENA SHORELINE (S/O MAKENA LANDING)
12. DATE/TIME/DAY OCCURRED	05/01/2008 0945 THUR
13 DATE/TIME REPORTED	05/01/2008 0945
14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES	MAKENA SHORELINE SOUTH OF MAKENA LANDING, STATE UNENCUMBERED LANDING
15. HOW REPORTED	ON VIEW

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

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
S-1/ PAUL NOBLE		M	S	KIHEI, HI 96753		
S-2/ KALEO EVANGELISTA		M	S	KIHEI, HI 96753		
		M				

20. SEX Composite Description Race	Age	WL	Build	Hair	Eyes	Complex	Date of Birth	Driver License/SS#
S-1,MALE, CAUCASIAN								
S-2, MALE, HAWAIIAN MIX			SLIM	BRN	BRN	TAN		

21. INVESTIGATION: 1. Insert a synopsis of the crime of 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

SYNOPSIS:

Maui Kayaks (Owner Paul Noble) was operating commercial activity on Makena Shoreline, state unencumbered land without a permit, a violation of section 13-221-35 HAR. Maui Kayaks was issued a cease and desist order from Land Division on 04/07/2008. Maui Kayaks employee, Kaleo Evangelista who was at the scene refused to comply with the order and insist DLNR take enforcement action against the kayak company.

ASSIGNMENTS:

I am presently assigned to the Department of Land and Natural Resource (DLNR), Division of Conservation and Resource Enforcement, assigned to the Maui Division, County of Maui.

OBSERVATION:

On 05/01/2008 at approximately 0945 hours, I was on patrol in the area south of Makena Landing when I observed five kayaks lined up along the shoreline on State unencumbered land. There were two male subjects, one of whom I recognized as an employee of Maui Kayaks lining up the kayaks on the shoreline. (Refer to report # MA-08-1036 & MA-08-1038)

CONTACT:

I made contact with Subject Evangelista and again advised him of the violation for which he became argumentative and stated that DLNR cannot do anything to him or the company. I showed Subject Evangelista a copy of the ceast and desist order from the State Land Agent and the attached tax map key showing the boundary of the state unencumbered land. Subject Evangelista challenged me to take enforcement action against him and/or the company. I advised him of the civil penalties for continuing to operate on State land and if necessary, the seizure of the equipment under section 199-7 of the Hawaii Revised Statutes. Subject Evangelista again challenged me and stated "go ahead take it!". I instructed Subject Evangelista to contact his employer, Paul Noble to get clarification and instructions regarding this violation and that any further actions would result in the company being fined $2000 for everyday that he continues to operate on State unencumbered land.

DISPOSITION:

I recommend this report be forwarded to Land Division for review and action

22. REPORT WRITTEN BY	Badge No.	Date/Time	23 SUPERVISOR APPROVING	Badge No.
VUONG, ERIK	241	05/01/2008 1130		20

24. DISPOSITION ☐ Unfounded ☐ Citation/No. ☐ Arrested/Prosecuted ☐ Other/No Arrest
☐ Arrested/No Prosecution ☐ Adult ☐ Juvenile

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

EXHIBIT "3"

RECEIVED
MAUI DISTRICT
LAND DIVISION
2009 APR -1 AM 8:16

DOCARE-

STATE OF HAWAII

INVESTIGATION REPORT

Dept. DLNR
Div. DOCARE

Seaward of
(2) 2-1-007:093 & 083

1. REPORT NUMBER	MA-08-1062
2. INVESTIGATOR	VUONG, ERIK
3. ISLAND	MAUI
4. DISTRICT	WAILUKU
CLASSIFICATION	LD - COMMERCIAL ACTIVITY ON STATE UNENCUMBERED LAND
5. COMPLAINANT (Firm Name, If Business)	ERIK VUONG
6. SEX / RACE / AGE	M
7. D.O.B.	
8. OCCUPATION	CREO II
9. ADDRESS	KAHULUI, HI 96732
10. SCHOOL EMPLOYED/SCHOOL ATTENDING	DLNR
Res. Ph. / Bus. Ph.	
11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET	MAKENA SHORELINE (MAKENA LANDING)
12. DATE/TIME/DAY OCCURRED	03/22/2008 0730 SAT
13. DATE/TIME REPORTED	03/22/2008 0730
14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES	MAKENA SHORELINE SOUTH OF MAKENA LANDING
15. HOW REPORTED	ON VIEW

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

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
S-1/ ROGER SIMONOT		M	S	KIHEI, HI 96753		
S-2/ PAUL NOBLE		M	S	KIHEI, HI 96753		
		M				

20. SEX Composite Description Race	Age	Wt.	Build	Hair	Eyes	Complex	Date of Birth	Driver License/SS#

21. INVESTIGATION: 1. Insert a synopsis of the crime of 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

South Pacific Kayak (Owner Roger Simonot) and Maui Kayak (Owner Paul Noble) continue to conduct commercial activity on Makena Shoreline, state unencumbered land without a permit, a violation of section 13-221-35 HAR. Both companies have been repeatedly warned not to conduct this type of activity on state unencumbered land but choose to disregard DOCARE officers orders.

ASSIGNMENTS:

I am presently assigned to the Department of Land and Natural Resource (DLNR), Division of Conservation and Resource Enforcement, assigned to the Maui Division, County of Maui. On 03/22/2008 at approximately 0730 hours, I was on routine patrol in the area of Makena landing.

OBSERVATION:

When I arrived on scene, I observed South Pacific Kayak and Maui Kayak's trucks parked with kayak trailer alongside the road. There were approximately 30-40 people sitting along the shoreline next to the kayaks receiving instructions from the kayak company employees. I monitored the activity for approximately 30 minutes while the employee gave instructions to the customers. At approximately 0800 hours, the kayak employee began to launch each individual kayaks with their customers. During this time, the kayak company maintained exclusive rights to this location, preventing any beachgoer from accessing the area.

RECOMMENDATION:

This is an on-going problem with these two companies who refused to comply with DOCARE officers orders to cease and desist commercial activities on state unencumbered land, a violation of section 13-221-35 HAR. Each time the employees are contacted by DOCARE officers, they are defiantly ignoring our orders and even stated that DOCARE officers have no jurisdiction and cannot take any action against them. I request that Land Division agents issue a cease and desist order against these two companies and any other companies that continue to operate commercial activities on state unencumbered land after being warned by DOCARE officers of their continued illegal activities. (Refer to previous reports MA-08-1035, MA-08-1036 & MA-08-1038).

DISPOSITION:

Forward to Land Division for further review and action. Refer to photo report.

22. REPORT WRITTEN BY	Badge No.	Date/Time	23. SUPERVISOR APPROVING	Badge No.
VUONG, ERIK	241	03/23/2008 1000	9/23/08	20

24. DISPOSITION ☐ Unfounded ☐ Citation/No. ☐ Arrested/Prosecuted ☐ Other/No Arrest ☐ Arrested/No Prosecution ☐ Adult ☐ Juvenile

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

EXHIBIT "4"

DLNR / DOCARE PHOTOGRAPH REPORT

CASE NUMBER: MA-08-1062

CLASSIFICATION: LAND DIVISION – COMMERCIAL ACTIVITY ON STATE UNENCUMBERED LAND

SCENE: MAKENA SHORELINE SOUTH OF MAKENA LANDING

DATE/TIME TAKEN: 03/22/2008 0730 HOURS

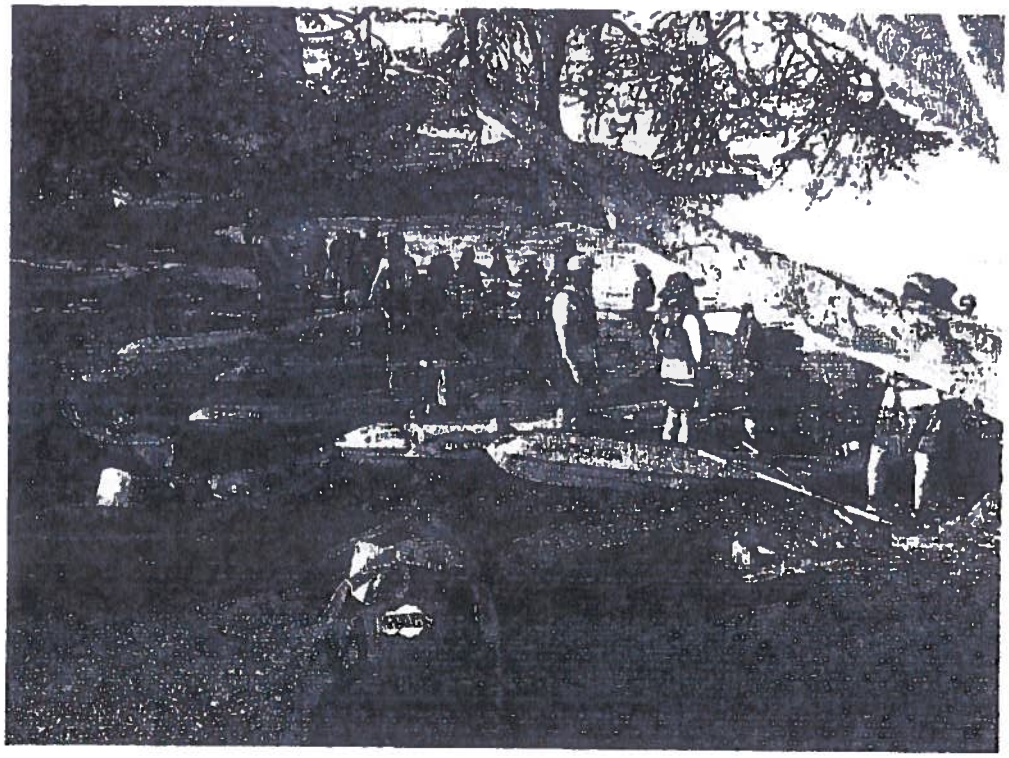
PHOTO TAKEN BY: OFFICER E. VUONG

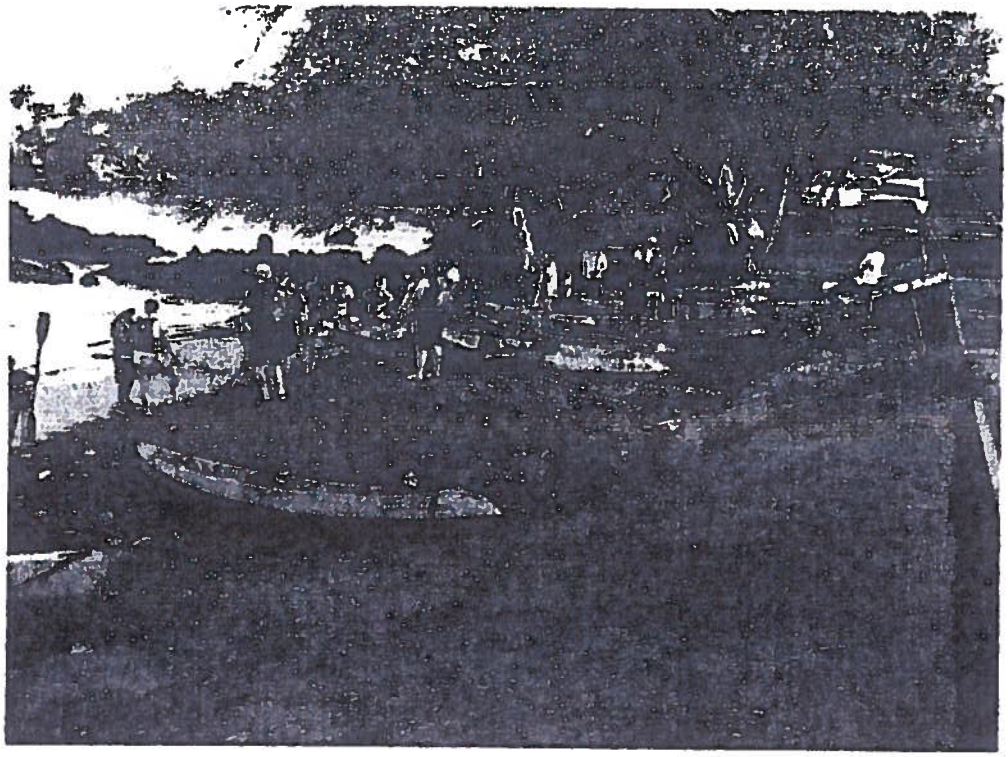
DESCRIPTION OF PHOTOS: 1 OF 4 PHOTOS OF COMMERCIAL ACTIVITY ON STATE UNENCUMBERED LAND.

(1) PICTURE OF SOUTH PACIFIC KAYAK EMPLOYEE (WHITE LONG-SLEEVE SHIRT) GIVING INSTRUCTIONS TO CUSTOMERS ON BEACH WITH KAYAKS.

(2) TWO PICTURE OF SOUTH PACIFIC KAYAK TRUCK WITH TRAILER PARKED ALONGSIDE ROADWAY.

(3) TWO PICTURES OF SOUTH PACIFIC KAYAK'S CUSTOMERS WITH KAYAK LINED UP ALONG THE SHORELINE RECEIVING INSTRUCTIONS.





(4) PICTURE OF MAUI KAYAKS VAN WITH EMPLOYEE REMOVING LIFEVEST AND OARS.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 26, 2011

NOTICE AND ORDER

TO: Paul Noble, Owner
Maui Kayaks

Lahaina, HI 96767

SUBJECT: Unauthorized Commercial Activity on Public Lands Identified as Tax Map Key: (2) 4-8-003: Portion of Parcel 001.

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, Hawaii Revised Statutes (HRS).

Your attention is directed to the following provisions of Title 13, Chapter 221:

Sections §13-221-35 and §13-221-2, Hawaii Administrative Rules:

HAR §13-221-35 Commercial Activities. No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative.

HAR §13-221-2 defines "Commercial Activity" as "the use of or activity on state land for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or demanding or requesting gifts, money, or services, except as allowed by chapter 13-7, shall be considered commercial activity. Commercial activities include activities whose base of operations are outside the boundaries of the unencumbered state lands, or provide transportation to or from the unencumbered state lands."

An inspection of the property on which the unauthorized commercial activities are being conducted was made on August 11, 2011, by the Department of Land and Natural Resources. The Department determined that:

1) The subject property, identified as Tax Map Key: (2) 4-8-003:001, is unencumbered public lands;

2) The following unauthorized commercial activity was conducted on the subject property: Operation of kayak tours and/or rentals. Through our investigation, it was determined that your tour guides are storing kayaks on the public beach

EXHIBIT "5"

area and using the public beach area to conduct safety briefings and instructions for customers or participants in that activity. These uses are not authorized by the Department of Land and Natural Resources under Chapter 13-221, HAR.

YOU ARE HEREBY ORDERED TO CEASE any further unauthorized commercial activity on the subject property. Should you fail to cease such activity immediately, you will be subject to the following:

Hawaii Revised Statutes §171-6 Powers: Except as otherwise provided by law, the board of land and natural resources ... may:

(15) 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 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 per day per violation may be assessed for each day in which the violation persists;

(B) Fined not more than $10,000 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 per day per violation may be assessed for each day in which the violation persists;

(C) Fined not more than $20,000 per violation for a third or subsequent violation within five years of the last violation, provided that, after written or verbal notification from the department, an additional $4,000 per day per violation may be assessed for each day in which the violation persists; and

(D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

Please contact Land Agent Larry Pacheco of our Maui District Office at (808) 984-8103 should you have any questions regarding this matter.

By: _____
William J. Aila Jr., Chairperson
Board of Land and Natural Resources

cc: District Board Member
District Branch
Maui DOCARE
County of Maui Parks & Recreation, Attn: Lisa Almeida

7008 1830 0001 5645 0279

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ .44
Certified Fee	2.85
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$5.59

Postmark Here

WAILUKU HI 96793 SEP 2 2011 USPS

Sent To: Paul Noble, Owner

Street, Apt. No.; or PO Box No.: MauiKayaks

City, State, ZIP+4: Lahaina, HI 96761

PS Form 3800, August 2006 — See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Paul Noble
Maui Kavaks

Lahaina, HI 96767

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name): Sarah Hughes
C. Date of Delivery: 9-6-11

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7008 1830 0001 5645 0279

PS Form 3811, February 2004 — Domestic Return Receipt — 102595-02-M-1540

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

54 High Street, Room 101
Wailuku, Hawaii 96793
PHONE: (808) 984-8103
FAX: (808) 984-8111

March 24, 2008

NOTICE AND ORDER

CERTIFIED MAIL

TO: Mr. Paul Noble, Owner
Maui Kayaks

Kihei, Hawaii 96753

SUBJECT: Unauthorized Business Operations on State Unencumbered Public Lands along the Shoreline and Surrounding Ocean Waters at Olowalu, Lahaina, Hawaii, Further Identified as Tax Map Key: (2) 4-8-003:001.

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, Hawaii Revised Statues (HRS) and Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District (shoreline), enacted pursuant to chapter 183-C of the HRS.

We have determined that:

1) The subject property, identified as the shoreline area seaward of Tax Map Key: (2) 4-8-002:003 is State Unencumbered Public Lands under the jurisdiction of the State Department of Land & Natural Resources Division of Land Management and the Office of Conservation and Coastal Lands;
2) The following uses were conducted on the subject premises: Unauthorized Commercial Business Operations (Kayak Tours);
3) These uses were not authorized by the Department of Land and Natural Resources under Chapters 13-221, or 13-5 HAR.

YOU ARE HEREBY ORDERED TO CEASE any further activity on the subject premises. Should you fail to cease such illegal activity immediately, you will be subject to fines up $500.00 per day pursuant to Chapter 13-221, HAR, and fines of up to $2,000.00 per day pursuant to Chapter 13-5, HAR, in addition to administrative costs incurred by the Department. All

EXHIBIT "6"

equipment used in the commission of a violation of the above mentioned rules will be subject to seizure under section 199-7 of the Hawaii Revised Statues.

Please contact the Maui District Land Office at 984-8103 to rectify this matter.

By:

Daniel Ornellas
District Land Agent

cc: District File
Maui DOCARE
OCCL

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Paul Noble, Owner
Maui Kayaks

Kihei, HI 96753

2. Artic
(Trans

PS Form

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Debra Wean ☐ Agent ☐ Addressee

B. Received by (Printed Name) Debra A Wean
C. Date of Delivery 3/29/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

595-02-M-1540

7007 1490 0003 3055 2864

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Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$5.21

WAILUKU HI 96793
Postmark Here
USPS

Sent To Mr. Paul Noble, Owner
Maui Kayaks
Street, Apt. No., or PO Box No.
City, State, ZIP+4 Kihei, HI 96753

PS Form 3800, August 2006 See Reverse for Instructions

-1038

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

54 High Street, Room 101
Wailuku, Hawaii 96793
PHONE: (808) 984-8103
FAX: (808) 984-8111

April 7, 2008

RECEIVED
2008 APR 10 AM 8:21
DOCARE, MAUI
DEPT. OF LAND AND
NATURAL RESOURCES

NOTICE AND ORDER

CERTIFIED MAIL

TO: Mr. Paul Noble, Owner
Maui Kayaks

Kihei, Hawaii 96753

SUBJECT: Unauthorized Business Operations on State Unencumbered Public Lands along the Shoreline of a Portion of Keauhou, Kalihi, Waipao, Papaanui, Kaeo, Honuaula, Makena, Makawao, Maui Further Identified as Seaward of Tax Map Key: (2) 2-1-007:083 and 093.

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, Hawaii Revised Statues (HRS) and Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District (shoreline), enacted pursuant to chapter 183-C of the HRS.

We have determined that:

1) The subject property, identified as the shoreline area seaward of Tax Map Key: (2) 2-1-007:083 and 093, further described as being located to the south of the Makena Landing is State Unencumbered Public Lands under the jurisdiction of the State Department of Land & Natural Resources Division of Land Management and the Office of Conservation and Coastal Lands;
2) The following uses were conducted on the subject premises: Unauthorized Business Operations (Kayak Tours / Rental Operation);
3) These uses were not authorized by the Department of Land and Natural Resources under Chapters 13-221, or 13-5 HAR.

YOU ARE HEREBY ORDERED TO CEASE any further activity on the subject premises. Should you fail to cease such illegal activity immediately, you will be subject to fines up $500.00

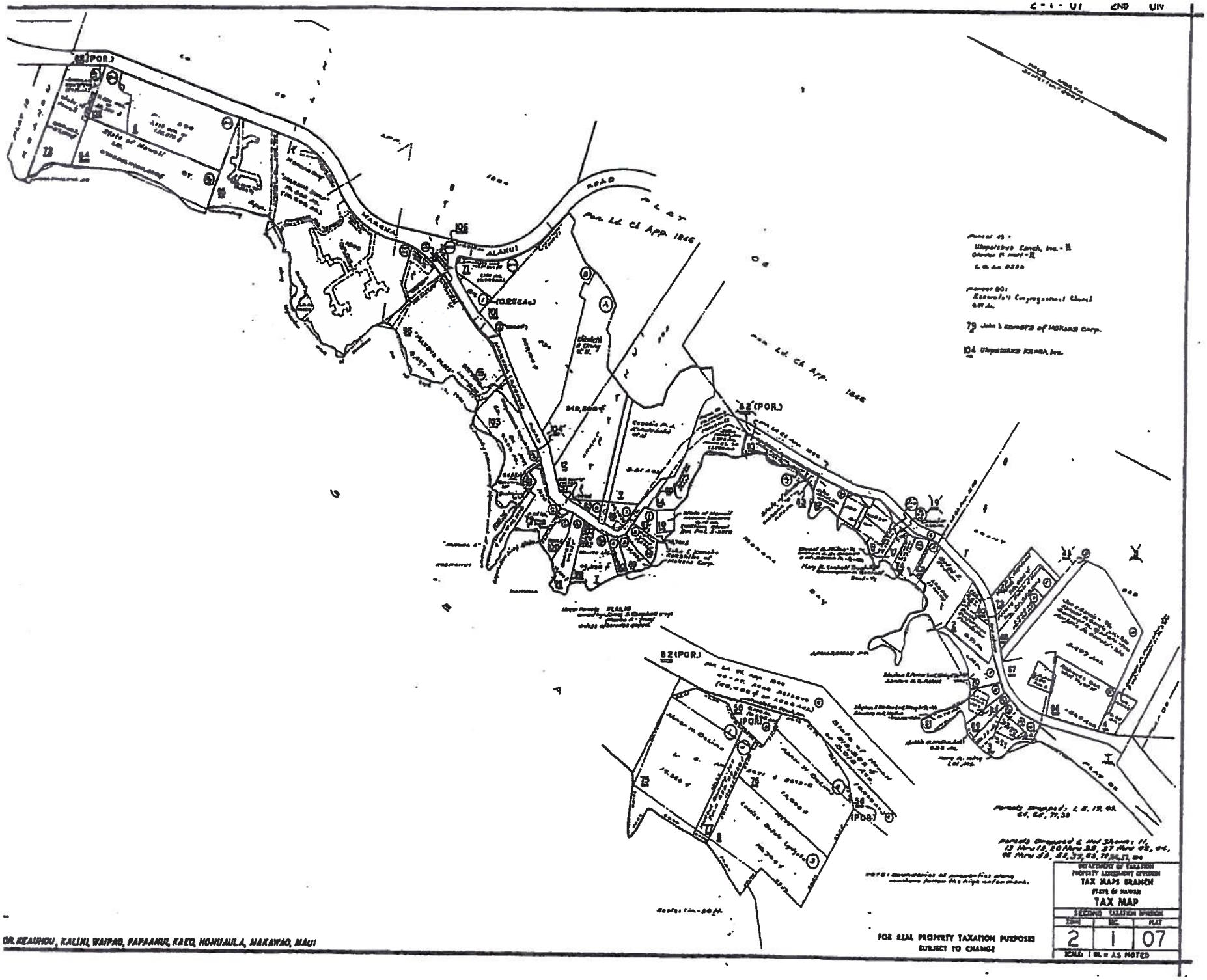
EXHIBIT "_"

per day pursuant to Chapter 13-221, HAR, and fines of up to $2,000.00 per day pursuant to Chapter 13-5, HAR, in addition to administrative costs incurred by the Department. All equipment used in the commission of a violation of the above mentioned rules will be subject to seizure under section 199-7 of the Hawaii Revised Statues.

Please contact the Maui District Land Office at 984-8103 to rectify this matter.

By: _____
Daniel Ornellas
District Land Agent

cc: District File
Maui DOCARE
OCCL



2-1-07 2ND DIV
ALANUI
ROAD
PLAT
Pen. Ld. Ct. App. 1846
82 (POR.)
79 John L. Kamets of Makena Corp.
104 Ulupalakua Ranch, Inc.
Parcels Dropped: 1, 5, 19, 43, 64, 66, 77, 38
Parcels Dropped & Not Shown: 11, 13 thru 18, 20 thru 38, 37 thru 42, 44, 46 thru 53, 58, 55, 63, 78, 86, 87, 104
NOTE: Boundaries of properties along seashore follow the high water mark.
DEPARTMENT OF TAXATION
PROPERTY ASSESSMENT DIVISION
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP
SECOND TAXATION DIVISION
ZONE
SEC.
PLAT
2
1
07
SCALE: 1 IN. = AS NOTED
FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE
OR. KEAUHOU, KALINI, WAIPAO, PAPAANUI, KAEO, HONUAULA, MAKAWAO, MAUI

ALAN M. ARAKAWA
Mayor

GLENN T. CORREA
Director

BRIANNE SAVAGE
Deputy Director

(808) 270-7230
Fax (808) 270-7934

DEPARTMENT OF PARKS & RECREATION

700 Hali'a Nakoa Street Unit 2, Wailuku, Hawaii 96793

September 4, 2013

Larry J. Pacheco, Land Agent
Department of Land & Natural Resources
Land Division
54 S. High Street, Room 101
Wailuku, HI 96793

Aloha Larry,

In response to your request for info on Paul Noble of Maui Kayaks. Confirming that he did take the training that you and others gave at the Whale Sanctuary, April 21, 2010 for our CORA Vendors. I have in hand the test that he took. He only missed one question, it was not on the land division section, he got all of those questions correct. In addition, he attended a refresher class given in early 2012 for renewal of CORA Vendors awareness training cards. You did that presentation also.

Please contact me if you need additional information.

Mahalo

Patricia Marino
County of Maui
Parks Department
CORA Permit Clerk
700 Halia Nakoa St.
808-270-7472

cc: Ipo Mossman

EXHIBIT "C"

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

December 13, 2013

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

PSF No: 13MD-157
Maui

Request that the Board Grant Petition for Contested Case Hearing by Maui Kayaks, Inc. for a Contested Case Hearing as to the Imposition of a $1,000.00 Fine and $580.00 in Administrative Costs Against Maui Kayaks Inc., for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, at TMK: (2) 4-8-003:001.

At the September 27, 2013 meeting of the Board of Land and Natural Resources, under Agenda Item D-10, the Board approved staff's recommendation as follows:

1. Find that Maui Kayaks Inc. 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 $580.00 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 Maui Kayaks Inc., shall conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, Maui Kayaks Inc. 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 September 27, 2013. On October 7, 2013, the Department received a petition for contested case via email from Mr. Paul Noble of Maui Kayaks, Inc., which is attached as Exhibit B. The Board is recommended to grant the petition as the petitioner has timely filed the petition and the Board has recently granted such petitions for similar actions in the in same area.

RECOMMENDATION: That the Board;

1) Grant the petition and authorize a contested case hearing as the findings against Maui Kayaks, Inc.;

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 13, 2013 J.O.

D-23
EXHIBIT "3"

2) Authorize the appointment of a Hearing Officer to conduct hearings relevant to the petition as provided by law; and

3) Delegate the authority for selection of the hearing officer to the Chairperson.

Respectfully submitted,

Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

William J. Aila, Jr.
Chairperson

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

September 27, 2013

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

PSF#13MD-157
Maui

Impose a $1,000.00 Fine and $580.00 in Administrative Costs Against Maui Kayaks Inc., 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 State Unencumbered Lands by Maui Kayaks Inc.

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 land, currently vacant and unencumbered.

RESPONSIBLE:

Trade Name:	Maui Kayaks Inc.
DCCA Registrant Name:	Maui Kayaks Inc.
Owner:	Paul Noble
Address:	
	Lahaina, HI 96767

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 27, 2013 GO

D-10

EXHIBIT "A"

VIOLATION:

On August 29, 2013 at 7:35 a.m., Mr. James Adkins of Maui Kayaks Inc. was observed conducting commercial business operations on the shoreline at Olowalu beach. Mr. Adkins, an instructor and tour guide with Maui Kayaks Inc., was observed providing lessons and a safety briefing to five clients. At the time, a total of four kayaks were lined up along the upper portion of the shoreline (State unencumbered land) to the rear of a trailer which had been modified for transporting kayaks. The operation and safety briefings lasted for approximately fifteen minutes. Upon completion of the briefing, the instructor pulled each kayak down to the water's edge and assisted the clients in launching their kayaks once they were seated.

Proper signage exists onsite notifying beachgoers that commercial activities are prohibited. Refer to the attached photo report (Exhibit A).

Previously documented warning and complaints against Maui Kayaks Inc. are listed below:

Complaint: 8/11/2011 for Commercial Activities @ Olowalu, a warning was issued to the instructor John Hess and owner Paul Noble was contacted and informed of the violation. Mr. Noble related that he would inform his staff to only transit the shoreline and conduct no briefing.

Complaint: 8/12/2008 for Commercial Activities @ Olowalu shoreline, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Ken Bode for conducting commercial activities (kayak tours) on state land. Report number MA-09-249.

Complaint: 5/1/2008 for Commercial Activities @ Makena, Maui. A warning was issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong for conducting commercial operations (kayak tours) on state land. Report number MA-08-1289.

Complaint: 3/22/2008 for Commercial Activities @ Makena, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong for conducting commercial operations (kayak tours) on state land. Report number MA-08-1062.

Cease & Desist Notice: August 26, 2011 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities.

Cease & Desist Notice: March 24, 2008 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities.

Cease & Desist Notice: Refer to cease and desist notice dated April 7, 2008 which

was sent to Maui Kayaks Inc. via certified mail related to unauthorized commercial activities and business operations on State lands.

REMARKS:

Staff feels the assessment of a fine is reasonable given Maui Kayaks Inc.'s history of violations. Verbal warnings have been issued to staff members and owner Mr. Paul Noble as well as multiple cease and desist notices which were sent to management via certified mail. It is our intent that a fine will serve as a deterrent to 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 commercial operators who, after obtaining a C.O.R.A permit, 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. Also note that Mr. Paul Noble has attended and completed the C.O.R.A permitting class, which consists of a segment from the Department of Land and Natural Resources, Land Division which specifically addresses unauthorized commercial activities on the shoreline and State unencumbered land.

The Maui District Land Office 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 the water portion of the surf lesson. 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 (A) - Photo of posted sign indicating no commercial activities at the subject location.

Exhibit (B) - Staff report (Complaint) dated 8/30/2013, submitted by Land Agent Larry Pacheco.

Exhibit (C) - Letter from the Department of Parks & Recreation dated September 4, 2013, confirming that Mr. Paul Noble attended the C.O.R.A training class on April 21, 2010 and the refresher class in early 2012.

RECOMMENDATION: That the Board:

1. Find that Maui Kayaks Inc. 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 $580.00 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 Maui Kayaks Inc., shall conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, Maui Kayaks Inc. 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

Land Board Meeting: September 27, 2013; D-10: Approved as submitted.

Oral request for a contested case hearing was made prior to the end of the meeting.

Olowalu Beach Reserve signs listing prohibited activities which include

No Commercial Activities.

EXHIBIT - A

LAND DIVISION

COMPLAINT FORM

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

Date/Time Of Call: 8/29/2013 7:35 a.m.
Received By: L. Pacheco

Name of Caller: Larry Pacheco (Land Agent) Telephone:
Address/Location: Olowalu, Unencumbered State Land
Tax Map Key: (2) 4-8-003:001

Additional Information (fully describe the complaint or problem):
On 8/29/2013 at 7:35am, while conducting checks of State lands in the Olowalu area, I observed several kayaks lined up along the upper portion of the shoreline on unencumbered State land with a group of people standing around the kayaks. Upon approaching the group I observed a male individual providing instruction to five people who were standing above the kayaks with paddles in their hands and wearing life jackets. I monitored the instructor as he explained paddling techniques and a short safety briefing. After the instructions were completed, the instructor / guide then pulled each kayak into the water and assisted the clients with launching off the beach.

Contact was then made with the instructor who identified himself as James Adkins of Maui Kayaks. I informed Mr. Adkins of the rules related to conducting commercial activities on state unencumbered land under Hawaii Administrative Rule 13-221-35. Mr. Adkins related that he was not aware that he was violating any laws or rules and was never briefed by his employer Mr. Paul Noble that he was not allowed to conduct the lessons and or briefings on the shoreline.

Refer to the attached photo report.

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 was identified and ownership confirmed via Tax Map and aerial overview.

State lands under DLNR:

   a. Provide report of what action taken. If site visit conducted, include photographs.

Exhibit B

Mr. Adkins was issued a verbal warning and informed that commercial activities were not allowed on the shoreline and unencumbered state lands without a permit from the board or its authorized representative.

On 8/30/2013, at 11:50am, I contacted Maui Kayaks owner Mr. Paul Noble at 874-4000. During our conversation I did inform him of my contact on the previous morning with his instructor Mr. Adkins. Mr. Noble advised me that he was not aware that his instructor had not been briefed on the rules related to operating on state land. He indicated that they have to provide a safety briefing to prevent any injuries while out in the water and that he was sure the state would not want to be held responsible if something did happen to their clients while out on the water because they were unable to conduct a briefing before entering the water due to a state rule. I then informed Mr. Noble that this location is not a permitted site for commercial operations to take place and therefore, the state is not liable for any part of his business operation.

A file review was also conducted with regards to previous documented warnings and the following had been issued to Mr. Noble:

Complaint: 8/11/2011 for Commercial Activities @ Olowalu, a warning was issued to the instructor John Hess and owner Paul Noble was contacted and informed of the violation. Mr. Noble related that he would inform his staff to only transit the shoreline and conduct no briefing (Exhibit 1)

Complaint: 8/12/2008 for Commercial Activities @ Olowalu shoreline, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Ken Bode for conducting commercial activities (kayak tours) on state land. Report number MA-09-249 (Exhibit 2).

Complaint: 5/1/2008 for Commercial Activities @ Makena, Maui. A warning was issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong four conducting commercial operations (kayak tours) on state land. Report number MA-08-1289 (Exhibit 3).

Complaint: 3/22/2008 for Commercial Activities @ Makena, Maui. Warning issued to Mr. Paul Noble by Conservation Enforcement Officer Erik Vuong for conducting commercial operations (kayak tours) on state land. Report number MA-08-1062 (Exhibit 4).

Cease & Desist Notice: August 26, 2011 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities (Exhibit 5).

Cease & Desist Notice: March 24, 2008 to Paul Noble of Maui Kayaks Inc. for Unauthorized Commercial Activities (Exhibit 6).

Cease & Desist Notice: Refer to cease and desist notice dated April 7, 2008 which was sent to Maui Kayaks via certified mail related to unauthorized commercial activities and business operations on State lands (Exhibit 7).

3. 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: Seek Board approval for the issuance of fines for the repeated violation by Maui Kayaks Inc. for violating Hawaii Administrative Rule 13-221-35 Commercial Activities. Staff will document board submittal and request enforcement of rule and assessment of $1,000.00 fine and administrative fees.

   Submitted by: Larry Pacheco _____ Date: 8 30 2013

   Approved by: _____ Date: _____

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

Cc: Land Division Administrator Russell Tsuji
Maui DOCARE

Photos taken: 8/29/2013

Maui Kayaks Inc. , Unauthorized Commercial Activities

Maui Kayak's instructor James Adkins depicted in photos 1, 2, and 3 providing lessons to clients along the State shoreline and unencumbered land.

View of parking area just below Honoapiilani Highway at the subject location.

Begins with

Cart

Home BREG

BREG Online Services

- Annual Business Filing
- Search for a Business Entity
- Purchase Documents Online
- Purchase Certificate of Good Standing
- Authenticate a Certificate of Good Standing
- Register a Business
- Entity List Builder

Contact BREG

Technical Support

Feedback

Create an Account

online Live Chat Technical Support

MAUI KAYAKS INC

DOMESTIC PROFIT CORPORATION

GENERAL INFO ANNUAL FILINGS OFFICERS STOCKS TRADE NAMES/MARKS OTHER FILINGS

BUY AVAILABLE DOCS

General Info

VIEW AND PRINT COMPANY INFO

Purchase a Certificate of Good Standing for this business:

ELECTRONIC	$7.50
PRINTED	$7.50

Add to Cart

MASTER NAME	MAUI KAYAKS INC
BUSINESS TYPE	Domestic Profit Corporation
FILE NUMBER	208048 D1
STATUS	Active
PURPOSE	OCEAN RECREATION TOUR BUSINESS
PLACE INCORPORATED	Hawaii UNITED STATES
REGISTRATION DATE	Apr 30, 2004
MAILING ADDRESS	LAHAINA, Hawaii 96767 UNITED STATES
TERM	PER
AGENT NAME	PAUL NOBLE
AGENT ADDRESS	LAHAINA, Hawaii 96767 UNITED STATES

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View in: Mobile | Classic

LAND DIVISION

COMPLAINT FORM

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

Date/Time Of Call: 8/11/2011, 7:55 a.m.
Received By: Larry Pacheco

Name of Caller: On View Telephone: _____
Address/Location: Olowalu Beach
Tax Map Key: (2) 4-8-003:001

Additional Information (fully describe the complaint or problem):
On 8/11/2011 at 7:55 a.m., I observed several different kayak tour groups along the shoreline and within the water at Olowalu Beach. The entire parking area was found to be full of vehicles from tourist participating in the kayak tours as well as multiple tour company's commercial vehicles with large trailers attached to them that are used to transport the kayaks. After stopping and monitoring the activities taking place along the shoreline and within the beach reserve, I noticed that three larger tour groups had already left the shoreline and had begun their kayak tours out within the water. I then observed four orange kayaks still laid out along the sand shoreline and a group of people standing to the rear of a white van within the parking area that had a Maui Kayak logo painted on the side of it. After being issued snorkel gear from an individual who was later identified as John Hess, the group moved down to the shoreline where the four kayaks were laid out. Once at the kayaks, Mr. Hess began to give the group a safety briefing and instruction on how to paddle and operate the kayaks. The group consisted of five adults and three children. The instruction and safety briefing along the shoreline went on for approximately 35 minutes. Mr. Hess then pulled each kayak down the shoreline and into the water where his clients then got into the vessels and paddled out to the nearby reef. Contact was then made with Mr. Hess as he was about to pull his guide kayak down the beach. Mr. Hess informed me that the company he works for (Maui Kayaks) does have a County of Maui C.O.R.A permit to conduct kayak tours. He also stated that he attended the C.O.R.A class approximately a year ago. He then stated that he normally conducts tours in the Makena area and rarely comes out to the Olowalu site because of the large amount of tour groups and commercial operators who operate from this location.

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? yes

2. Conduct Internal Review.

   a. Locate area on map(s). Attach tax map.
   b. Determine ownership. Findings and source used to verify (attach documents):

EXHIBIT "1"

The subject area where the commercial activities were observed to be taking place is state land. The area is also designated as a beach reserve.

3. If area identified is:

Private property

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:

a. Provide report of what action taken. If site visit conducted, include photographs. Refer to the attached photo report of the commercial activities taking place on state land without a permit or authorization. Mr. Hess was also advised that the use of the shoreline for storage and conducting his instruction and safety briefings were not allowed. He was informed that he was only allowed to use the beach and shoreline area for transit from his vehicle to the water. No lessons or storage at all should be conducted within the beach reserve. Mr. Hess acknowledged that he understood and stated that he was not aware of these rules as he observed all the other tour companies doing the same thing he did.

Maui Kayaks main office was also contacted via phone. Manager Paul Noble was informed of the above mentioned prohibited activities that were observed. He related that he would speak to his staff and try get them to use the shoreline area for transit purposes only, no instruction or safety briefings.

b. 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:

Notify applicable State agency; give location information and caller information

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

4. 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: Maui District Land Office will attempt to issue a cease and desist notice to Maui Kayaks from the Chairperson's office. We will then serve the notice to the company and inform them that they can only conduct their commercial operations in the designated park areas for which their C.O R.A permits them to operate out of. Maui DOCARE will also be advised of this complaint and asked to help with monitoring the shoreline and other state lands for unauthorized commercial activities.

This is an ongoing problem at this location with multiple tour companies using this site. Follow up checks of the area will continue to be conducted in an attempt to stop the unauthorized commercial activities from taking place.

Submitted by: Larry Pacheco Date: 8/15/2011

Approved by: _____ Date:

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

CC: Maui DOCARE (information purposes only)

Photos taken 8 11 2011

Maui Kayaks, Commercial Acts. Olowalu

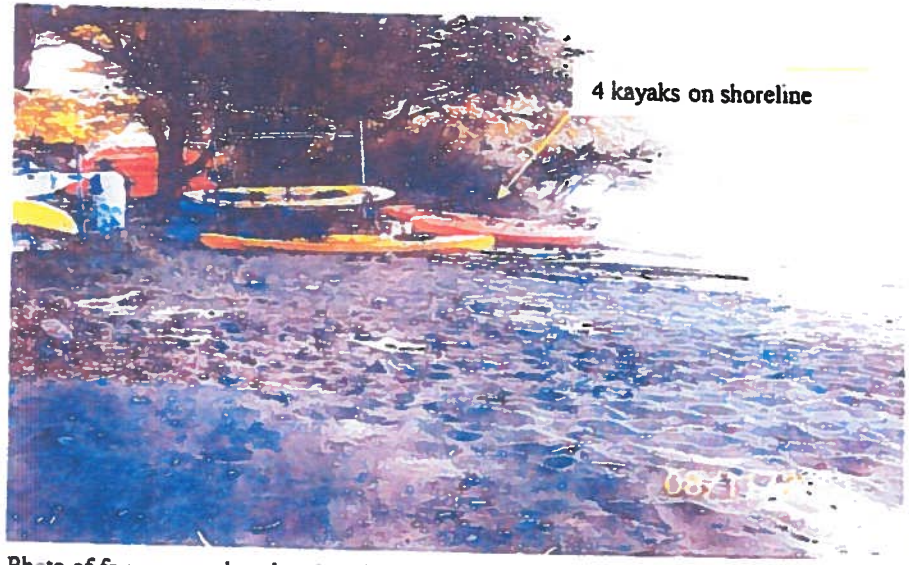
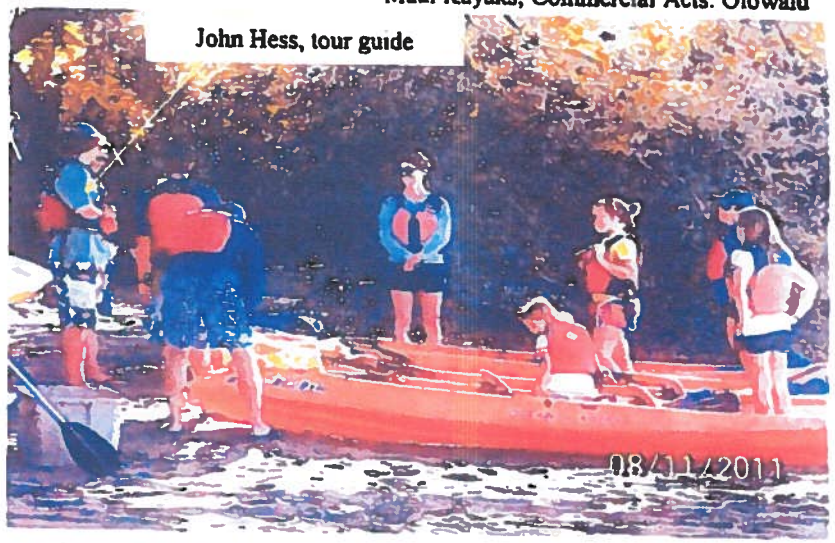


Photo of four orange kayaks placed on shoreline while guest are fitted with safety gear at a parked van.



Guest being briefed by guide John Hess on the sand shoreline within the State Beach Reserve.

Photos of tour guide John Hess providing safety briefing and instruction to guest on the shoreline.

Photos taken 8/11/2011

Maui Kayaks, Commercial Acts Olowalu

Additional photos of tour guide John Hess providing instruction and safety briefing while encumbering a portion of the state beach reserve for his commercial activity.

Photos of Maui kayaks equipment van and trailer.

COPY

DOCARE-6

Dept. DLNR
Div. DOCARE

RECEIVED
2008 SEP 16 PM 1:25
LAND DISTRICT DIVISION

STATE OF HAWAII
INVESTIGATION REPORT

TMK:(2) 4-8-003:001

1. REPORT NUMBER	MA 09-249
2. INVESTIGATOR	BODE, KENNETH JR.

CLASSIFICATION: LD-LAND MANAGEMENT- COMMERCIAL OPERATOR	3. ISLAND: MAUI	4. DISTRICT: LAHAINA	
5. COMPLAINANT (Firm Name, If Business): STATE OF HAWAII	6. SEX: M; RACE; AGE	7. D.O.B.	8. OCCUPATION: DOCARE
9. ADDRESS: KAHULUI, HI 96732	10. SCHOOL EMPLOYED/SCHOOL ATTENDING; Res. Ph; Bus Ph		
11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET: ON STATE PROPERTY, OFF AND MAKAI OF HONOAPIILANI	12. DATE/TIME/DAY OCCURRED: 8-12-08/0745/TUESDAY	13. DATE/TIME REPORTED: same	
14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES		15. HOW REPORTED: ON BEAT	

16. VEHICLE INVOLVED	Year	Make	Model	Color(s)	License No.	I.D. Characteristics
					590 MCX	

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
MAUI KAYAKS		O	S	Kihei, HI 96753		
		O				
		O				

20. SEX Composite Description Race	Age	Wt.	Build	Hair	Eyes	Complex	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 Tuesday the 12 of August 2008, at approximately 0745 hours I made contact with a commercial Operator on the beach in the Olowalu area and advised him of the new permit requirement, call owner left message.

ASSIGNMENT/SCENE:

At the date and time stated above I was assigned to patrol and checks by FS C. YAMAMOTO, interview occurred on the beach off and makai of Honoapiilani Hwy in the Olowalu area

INFORMATION/EDUCATION:

Waiting till the Maui Kayaks guide was done giving his safety briefing I informed him about the new permit requirement and asked if he was aware of the fact, he stated that the owner told him nothing about the new reqirement, and he did not have a permit.

OWNER CALLED:

I called the business office of MAUI KAYAKS, and left a message as no one answered the phone after several attempts.

CONTACT MADE:

I later received a call from Paul NOBLE who stated he was owner, I told them to call the State Land Div. for information, and that a report would be made and sent to the DLNR Chairwomen; Laura THIELEN for further review.

DISPOSITION:

Pending
Records

22. REPORT WRITTEN BY	Badge No.	Date/Time	23. SUPERVISOR APPROVING	Badge No
Kenneth Bode, Jr.	146	8-12-2008/1130		

24. DISPOSITION ☐ Unfounded ☐ Citation/No. ☐ Arrested/Prosecuted ☐ Other/No Arrest ☐ Arrested/No Prosecution ☐ Adult ☐ Juvenile

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

EXHIBIT "2"

Refers: TMK (2) 2-1-007:083

RECEIVED
MAUI DISTRICT
LAND DIVISION
2008 MAY -9 AM 9:06

DOCARE-6

STATE OF HAWAII
INVESTIGATION REPORT

Dept. DLNR
Div. DOCARE

1 REPORT NUMBER	MA-08-1289
2. INVESTIGATOR	VUONG, ERIK
CLASSIFICATION	LD - COMMERCIAL ACTIVITY ON STATE UNENCUMBERED LAND
3 ISLAND	MAUI
4 DISTRICT	WAILUKU
5 COMPLAINANT (Firm Name, if Business)	ERIK VUONG
6 SEX RACE AGE	M
7 DOB	
8 OCCUPATION	CREO II
9. ADDRESS	KAHULUI, HI 96732
10. SCHOOL EMPLOYED/SCHOOL ATTENDING	DLNR
Res Ph.	
Bus Ph	
11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET	MAKENA SHORELINE (S/O MAKENA LANDING)
12. DATE/TIME/DAY OCCURRED	05/01/2008 0945 THUR
13 DATE/TIME REPORTED	05/01/2008 0945
14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES	MAKENA SHORELINE SOUTH OF MAKENA LANDING, STATE UNENCUMBERED LANDING
15 HOW REPORTED	ON VIEW

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

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

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
S-1/ PAUL NOBLE		M	S	KIHEI, HI 96753		
S-2/ KALEO EVANGELISTA		M	S	KIHEI, HI 96753		
		M				

20. SEX Composite Description Race	Age	Wt.	Build	Hair	Eyes	Complex	Date of Birth	Driver License/SS#
S-1,MALE, CAUCASIAN								
S-2, MALE, HAWAIIAN MIX			SLIM	BRN	BRN	TAN		

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

SYNOPSIS:

Maui Kayaks (Owner Paul Noble) was operating commercial activity on Makena Shoreline, state unencumbered land without a permit, a violation of section 13-221-35 HAR. Maui Kayaks was issued a cease and desist order from Land Division on 04/07/2008. Maui Kayaks employee, Kaleo Evangelista who was at the scene refused to comply with the order and insist DLNR take enforcement action against the kayak company.

ASSIGNMENTS:

I am presently assigned to the Department of Land and Natural Resource (DLNR), Division of Conservation and Resource Enforcement, assigned to the Maui Division, County of Maui.

OBSERVATION:

On 05/01/2008 at approximately 0945 hours, I was on patrol in the area south of Makena Landing when I observed five kayaks lined up along the shoreline on State unencumbered land. There were two male subjects, one of whom I recognized as an employee of Maui Kayaks lining up the kayaks on the shoreline. (Refer to report # MA-08-1036 & MA-08-1038)

CONTACT:

I made contact with Subject Evangelista and again advised him of the violation for which he became argumentative and stated that DLNR cannot do anything to him or the company. I showed Subject Evangelista a copy of the coast and desist order from the State Land Agent and the attached tax map key showing the boundary of the state unencumbered land. Subject Evangelista challenged me to take enforcement action against him and/or the company. I advised him of the civil penalties for continuing to operate on State land and if necessary, the seizure of the equipment under section 199-7 of the Hawaii Revised Statutes. Subject Evangelista again challenged me and stated "go ahead take it!". I instructed Subject Evangelista to contact his employer, Paul Noble to get clarification and instructions regarding this violation and that any further actions would result in the company being fined $2000 for everyday that he continues to operate on State unencumbered land.

DISPOSITION:

I recommend this report be forwarded to Land Division for review and action

22. REPORT WRITTEN BY	Badge No	Date/Time	23 SUPERVISOR APPROVING	Badge No.
VUONG, ERIK	241	05/01/2008 1130		20

24. DISPOSITION ☐ Unfounded ☐ Cleared/No ☐ Arrested/Prosecuted ☐ Other/No Arrest ☐ Arrested/No Prosecution ☐ Adult ☐ Juvenile

25 Date/Time Reproduced	26 Distribution	27 Connecting Report No

EXHIBIT "3"

LD

RECEIVED
MAUI DISTRICT
LAND DIVISION
2008 APR -1 AM 8:16

DOCARE-6

STATE OF HAWAII

INVESTIGATION REPORT

Dept. DLNR
Div. DOCARE

Scanned of
(2) 2-1-017:093 & 083

1. REPORT NUMBER	MA-08-1082
2. INVESTIGATOR	VUONG, ERIK
3. ISLAND	MAUI
4. DISTRICT	WAILUKU
CLASSIFICATION	LD - COMMERCIAL ACTIVITY ON STATE UNENCUMBERED LAND
5. COMPLAINANT (Firm Name, if Business)	ERIK VUONG
6. SEX / RACE / AGE	M
7. D.O.B.	
8. OCCUPATION	CREO II
9. ADDRESS	KAHULUI, HI 96732
10. SCHOOL EMPLOYED/SCHOOL ATTENDING	DLNR
Res. Ph. / Bus. Ph	
11. LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET	MAKENA SHORELINE (MAKENA LANDING)
12. DATE/TIME/DAY OCCURRED	03/22/2008 0730 SAT
13. DATE/TIME REPORTED	03/22/2008 0730
14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES	MAKENA SHORELINE SOUTH OF MAKENA LANDING
15. HOW REPORTED	ON VIEW

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

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
S-1/ ROGER SIMONOT		M	S	KIHEI, HI 96753		
S-2/ PAUL NOBLE		M	S	KIHEI, HI 96753		
		M				

20. SEX Composite Description Race	Age	Wt.	Build	Hair	Eyes	Complex	Date of Birth	Driver License/SS#

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

South Pacific Kayak (Owner Roger Simonot) and Maui Kayak (Owner Paul Noble) continue to conduct commercial activity on Makena Shoreline, state unencumbered land without a permit, a violation of section 13-221-35 HAR. Both companies have been repeatedly warned not to conduct this type of activity on state unencumbered land but choose to disregard DOCARE officers orders.

ASSIGNMENTS:

I am presently assigned to the Department of Land and Natural Resource (DLNR), Division of Conservation and Resource Enforcement, assigned to the Maui Division, County of Maui. On 03/22/2008 at approximately 0730 hours, I was on routine patrol in the area of Makena landing.

OBSERVATION:

When I arrived on scene, I observed South Pacific Kayak and Maui Kayak's trucks parked with kayak trailer alongside the road. There were approximately 30-40 people sitting along the shoreline next to the kayaks receiving instructions from the kayak company employees. I monitored the activity for approximately 30 minutes while the employee gave instructions to the customers. At approximately 0800 hours, the kayak employee began to launch each individual kayaks with their customers. During this time, the kayak company maintained exclusive rights to this location, preventing any beachgoer from accessing the area.

RECOMMENDATION:

This is an on-going problem with these two companies who refused to comply with DOCARE officers orders to cease and desist commercial activities on state unencumbered land, a violation of section 13-221-35 HAR. Each time the employees are contacted by DOCARE officers, they are defiantly ignoring our orders and even stated that DOCARE officers have no jurisdiction and cannot take any action against them. I request that Land Division agents issue a cease and desist order against these two companies and any other companies that continue to operate commercial activities on state unencumbered land after being warned by DOCARE officers of their continued illegal activities. (Refer to previous reports MA-08-1035, MA-08-1036 & MA-08-1038).

DISPOSITION:

Forward to Land Division for further review and action. Refer to photo report.

22. REPORT WRITTEN BY	Badge No.	Date/Time	23. SUPERVISOR APPROVING	Badge No
VUONG, ERIK	241	03/23/2008 1000	8/23/08	20

24. DISPOSITION ☐ Unfounded ☐ Citation/No. ☐ Arrested/Prosecuted ☐ Cited/No Arrest ☐ Arrested/No Prosecution ☐ Adult ☐ Juvenile

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

EXHIBIT "4"

DLNR / DOCARE PHOTOGRAPH REPORT

CASE NUMBER: MA-08-1062

CLASSIFICATION: LAND DIVISION – COMMERCIAL ACTIVITY ON STATE UNENCUMBERED LAND

SCENE: MAKENA SHORELINE SOUTH OF MAKENA LANDING

DATE/TIME TAKEN: 03/22/2008 0730 HOURS

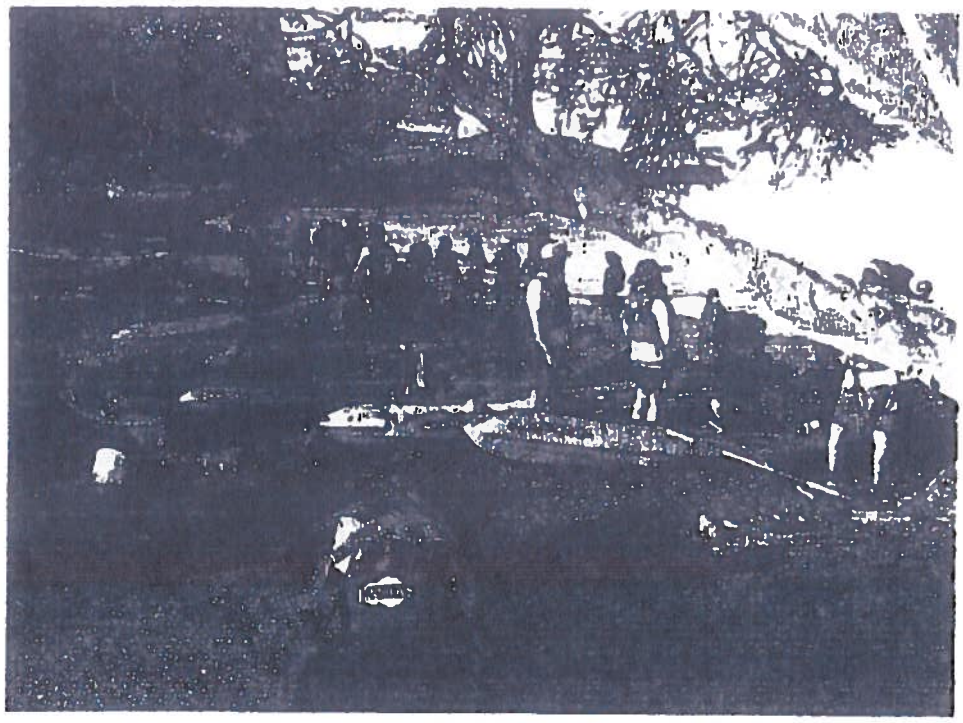
PHOTO TAKEN BY: OFFICER E. VUONG

DESCRIPTION OF PHOTOS: 1 OF 4 PHOTOS OF COMMERCIAL ACTIVITY ON STATE UNENCUMBERED LAND.

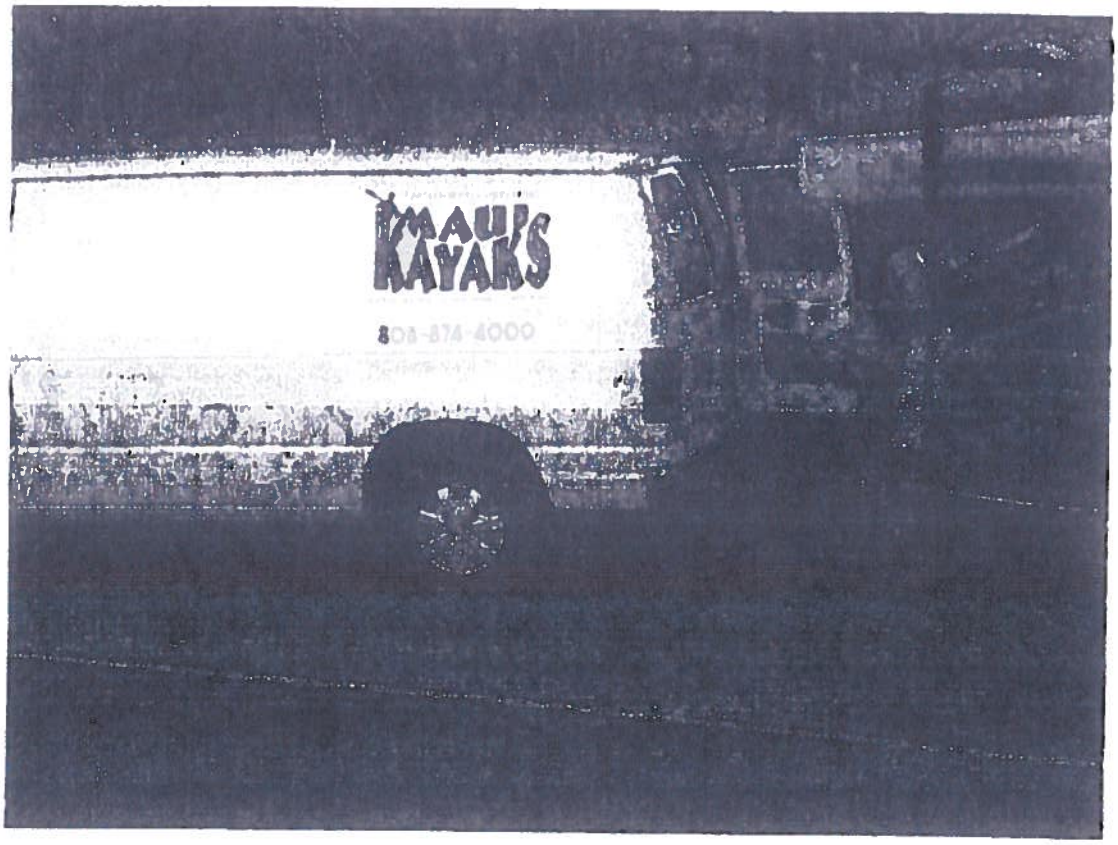
(1) PICTURE OF SOUTH PACIFIC KAYAK EMPLOYEE (WHITE LONG-SLEEVE SHIRT) GIVING INSTRUCTIONS TO CUSTOMERS ON BEACH WITH KAYAKS.

(2) TWO PICTURE OF SOUTH PACIFIC KAYAK TRUCK WITH TRAILER PARKED ALONGSIDE ROADWAY.

(3) TWO PICTURES OF SOUTH PACIFIC KAYAK'S CUSTOMERS WITH KAYAK LINED UP ALONG THE SHORELINE RECEIVING INSTRUCTIONS.



(4) PICTURE OF MAUI KAYAKS VAN WITH EMPLOYEE REMOVING LIFEVEST AND OARS.



NEIL ABERCROMBIE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

August 26, 2011

NOTICE AND ORDER

TO: Paul Noble, Owner
Maui Kayaks

Lahaina, HI 96767

SUBJECT: Unauthorized Commercial Activity on Public Lands Identified as Tax Map Key: (2) 4-8-003: Portion of Parcel 001.

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, Hawaii Revised Statutes (HRS).

Your attention is directed to the following provisions of Title 13, Chapter 221:

Sections §13-221-35 and §13-221-2, Hawaii Administrative Rules:

HAR §13-221-35 Commercial Activities. No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative.

HAR §13-221-2 defines "Commercial Activity" as "the use of or activity on state land for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or demanding or requesting gifts, money, or services, except as allowed by chapter 13-7, shall be considered commercial activity. Commercial activities include activities whose base of operations are outside the boundaries of the unencumbered state lands, or provide transportation to or from the unencumbered state lands."

An inspection of the property on which the unauthorized commercial activities are being conducted was made on August 11, 2011, by the Department of Land and Natural Resources. The Department determined that:

1) The subject property, identified as Tax Map Key. (2) 4-8-003:001, is unencumbered public lands;

2) The following unauthorized commercial activity was conducted on the subject property: Operation of kayak tours and/or rentals. Through our investigation, it was determined that your tour guides are storing kayaks on the public beach

EXHIBIT "5"

area and using the public beach area to conduct safety briefings and instructions for customers or participants in that activity. These uses are not authorized by the Department of Land and Natural Resources under Chapter 13-221, HAR.

YOU ARE HEREBY ORDERED TO CEASE any further unauthorized commercial activity on the subject property. Should you fail to cease such activity immediately, you will be subject to the following:

Hawaii Revised Statutes §171-6 Powers: Except as otherwise provided by law, the board of land and natural resources ... may:

(15) 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 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 per day per violation may be assessed for each day in which the violation persists;

(B) Fined not more than $10,000 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 per day per violation may be assessed for each day in which the violation persists;

(C) Fined not more than $20,000 per violation for a third or subsequent violation within five years of the last violation, provided that, after written or verbal notification from the department, an additional $4,000 per day per violation may be assessed for each day in which the violation persists; and

(D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

Please contact Land Agent Larry Pacheco of our Maui District Office at (808) 984-8103 should you have any questions regarding this matter.

By: _____
William J. Aila Jr., Chairperson
Board of Land and Natural Resources

cc: District Board Member
District Branch
Maui DOCARE
County of Maui Parks & Recreation, Attn: Lisa Almeida

7008 1830 0001 5645 0279

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Total Postage & Fees	$5.59

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WAILUKU, HI 96793 SEP 2 2011 USPS

Sent To Paul Noble, Owner
Street, Apt. No.; or PO Box No. MauiKayaks
City, State, ZIP+4 Lahaina, HI 96761

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Paul Noble
Maui Kavaks

Lahaina, HI 96767

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sarah Hughes
C. Date of Delivery 9-6-11

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
XX Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7008 1830 0001 5645 0279

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

54 High Street, Room 101
Wailuku, Hawaii 96793
PHONE: (808) 984-8103
FAX: (808) 984-8111

March 24, 2008

NOTICE AND ORDER

CERTIFIED MAIL

TO: Mr. Paul Noble, Owner
Maui Kayaks

Kihei, Hawaii 96753

SUBJECT: Unauthorized Business Operations on State Unencumbered Public Lands along the Shoreline and Surrounding Ocean Waters at Olowalu, Lahaina, Hawaii, Further Identified as Tax Map Key: (2) 4-8-003:001.

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, Hawaii Revised Statues (HRS) and Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District (shoreline), enacted pursuant to chapter 183-C of the HRS.

We have determined that:

1) The subject property, identified as the shoreline area seaward of Tax Map Key: (2) 4-8-002:003 is State Unencumbered Public Lands under the jurisdiction of the State Department of Land & Natural Resources Division of Land Management and the Office of Conservation and Coastal Lands;
2) The following uses were conducted on the subject premises: Unauthorized Commercial Business Operations (Kayak Tours);
3) These uses were not authorized by the Department of Land and Natural Resources under Chapters 13-221, or 13-5 HAR.

YOU ARE HEREBY ORDERED TO CEASE any further activity on the subject premises. Should you fail to cease such illegal activity immediately, you will be subject to fines up $500.00 per day pursuant to Chapter 13-221, HAR, and fines of up to $2,000.00 per day pursuant to Chapter 13-5, HAR, in addition to administrative costs incurred by the Department. All

EXHIBIT "6"

equipment used in the commission of a violation of the above mentioned rules will be subject to seizure under section 199-7 of the Hawaii Revised Statues.

Please contact the Maui District Land Office at 984-8103 to rectify this matter.

By:

Daniel Ornellas
District Land Agent

cc: District File
Maui DOCARE
OCCL

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Paul Noble, Owner
Maui Kayaks

Kihei, HI 96753

2. Artic
(Trans

PS Form

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Debra Awean ☑ Agent ☐ Addressee

B. Received by (Printed Name) Debra A Wean

C. Date of Delivery 3/29/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

595-02-M-1540

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$5.21

WAILUKU HI 96793
Postage Here
USPS

Sent To Mr. Paul Noble, Owner
Maui Kayaks
Street, Apt. No., or PO Box No.
City, State, ZIP+4 Kihei, HI 96753

PS Form 3800, August 2006 See Reverse for Instructions

-1038

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

54 High Street, Room 101
Wailuku, Hawaii 96793
PHONE: (808) 984-8103
FAX: (808) 984-8111

April 7, 2008

RECEIVED
2008 APR 10 AM 8:21
DOCARE, MAUI
DEPT. OF LAND AND
NATURAL RESOURCES

NOTICE AND ORDER

CERTIFIED MAIL

TO: Mr. Paul Noble, Owner
Maui Kayaks

Kihei, Hawaii 96753

SUBJECT: Unauthorized Business Operations on State Unencumbered Public Lands along the Shoreline of a Portion of Keauhou, Kalihi, Waipao, Papaanui, Kaeo, Honuaula, Makena, Makawao, Maui Further Identified as Seaward of Tax Map Key: (2) 2-1-007:083 and 093.

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, Hawaii Revised Statues (HRS) and Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District (shoreline), enacted pursuant to chapter 183-C of the HRS.

We have determined that:

1) The subject property, identified as the shoreline area seaward of Tax Map Key: (2) 2-1-007:083 and 093, further described as being located to the south of the Makena Landing is State Unencumbered Public Lands under the jurisdiction of the State Department of Land & Natural Resources Division of Land Management and the Office of Conservation and Coastal Lands;
2) The following uses were conducted on the subject premises: Unauthorized Business Operations (Kayak Tours / Rental Operation);
3) These uses were not authorized by the Department of Land and Natural Resources under Chapters 13-221, or 13-5 HAR.

YOU ARE HEREBY ORDERED TO CEASE any further activity on the subject premises. Should you fail to cease such illegal activity immediately, you will be subject to fines up $500.00

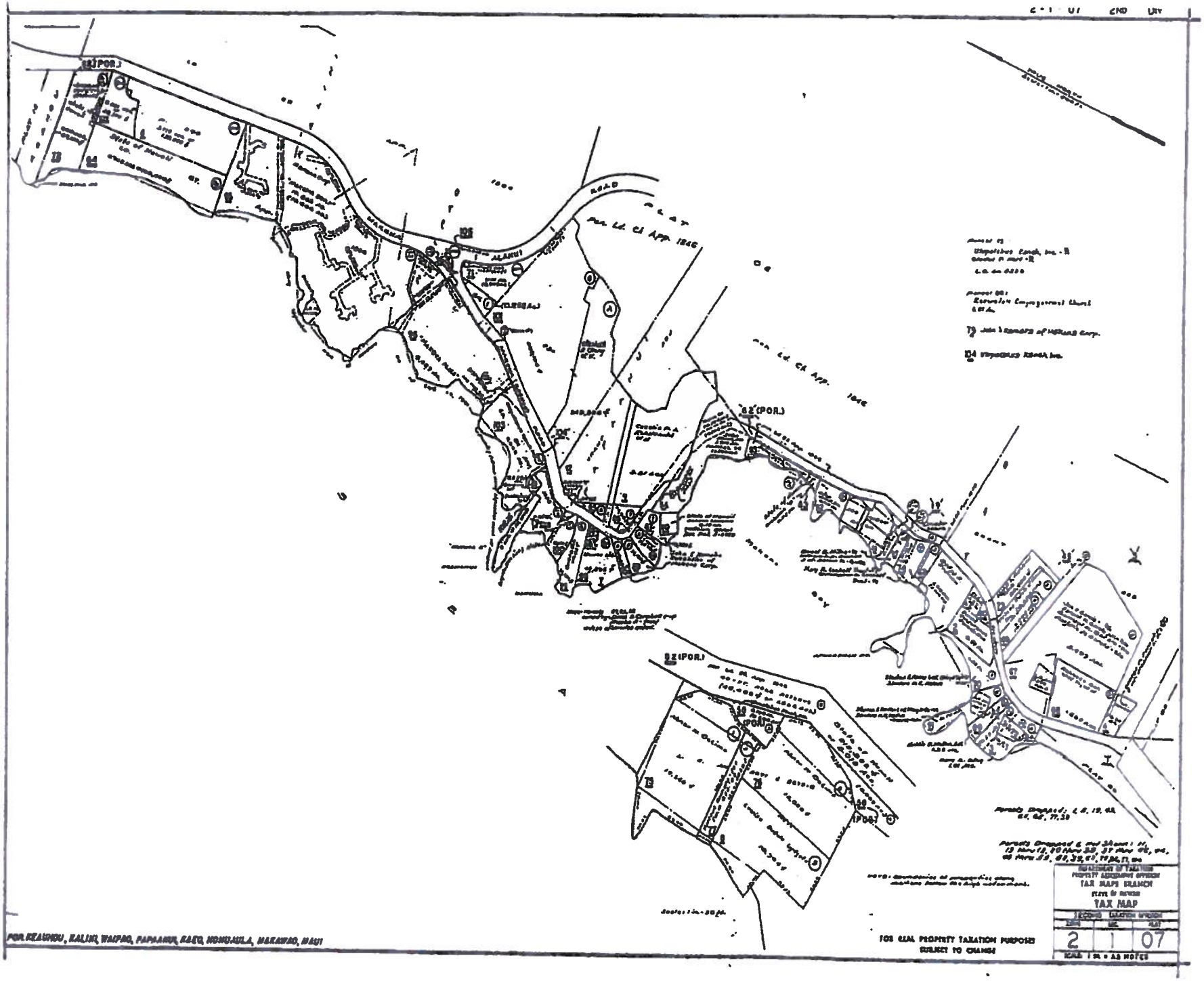
EXHIBIT 7

per day pursuant to Chapter 13-221, HAR, and fines of up to $2,000.00 per day pursuant to Chapter 13-5, HAR, in addition to administrative costs incurred by the Department. All equipment used in the commission of a violation of the above mentioned rules will be subject to seizure under section 199-7 of the Hawaii Revised Statues.

Please contact the Maui District Land Office at 984-8103 to rectify this matter.

By: _____
Daniel Ornellas
District Land Agent

cc: District File
Maui DOCARE
OCCL



TAX MAP
2
1
07
FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE
POR. KEAUHOU, KALIHI, WAIPAO, PAPAAHUI, KAEO, HONUAULA, MAKAWAO, MAUI

ALAN M. ARAKAWA
Mayor

GLENN T. CORREA
Director

BRIANNE SAVAGE
Deputy Director

(808) 270-7230
Fax (808) 270-7934

DEPARTMENT OF PARKS & RECREATION

700 Hali'a Nakoa Street Unit 2, Wailuku, Hawaii 96793

September 4, 2013

Larry J. Pacheco, Land Agent
Department of Land & Natural Resources
Land Division
54 S. High Street, Room 101
Wailuku, HI 96793

Aloha Larry,

In response to your request for info on Paul Noble of Maui Kayaks. Confirming that he did take the training that you and others gave at the Whale Sanctuary, April 21, 2010 for our CORA Vendors. I have in hand the test that he took. He only missed one question, it was not on the land division section, he got all of those questions correct. In addition, he attended a refresher class given in early 2012 for renewal of CORA Vendors awareness training cards. You did that presentation also.

Please contact me if you need additional information.

Mahalo

Patricia Marino
County of Maui
Parks Department
CORA Permit Clerk
700 Halia Nakoa St.
808-270-7472

cc: Ipo Mossman

EXHIBIT "C"

STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

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

INSTRUCTIONS:

1. File (deliver, mail, fax or email) 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
   Email: DLNR.CO.APO@hawaii.gov, Phone: (808) 587-1496, Fax: (808) 587-0390

2. 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.

3. 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.

4. 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 Mau Kayars	**2. Contact Person** PAUL NOBLE	
3. Address	**4. City** Lahaina	**5. State and ZIP** HI 96767
6. Email	**7. Phone**	**8. Fax**

B. ATTORNEY (if represented)		
9. Attorney Name	**10. Firm Name**	
11. Address	**12. City**	**13. State and ZIP**
14. Email	**15. Phone**	**16. Fax**

EXHIBIT "B"

C. SUBJECT MATTER

17. Board Action Being Contested

Fines For $1000 And Admin Fees of $580.00

18. Board Action Date

9.30.13

19. Item No.

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

Board action led to unfair and distorted comments by Agents of DLNR to local media that misconstrue the Actual event And slander Maui Kayaks.

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

Disagree with Fine. No commercial Activity occurred on Beach. Also disagree with some companies having Fines waved But not our company.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

① Relief From Fines & Fees, ② We ASK that Future Contested case be held on Maui. The action occured on Maui, All participants ARE from Maui;

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

Have evidence that will show we are being Singled out. Ruling is not applied evenly.

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

Clarification on use of unencumbered lands statewide. why is this Ruling not applied evenly throughout Maui and Hawaii?

☐ 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.

PAUL NOBLE	[signature]	10/5/13
Petitioner or Representative (Print your name)	Signature	Date

Makena Landing
Makena Road
Area of Unauthorized Commercial Use
Honoiki Street
Exhibit (4)