

STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawai'i 96813

September 14, 2012

Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

File: SP0064  
Hawai'i

Termination of Revocable Permit No. SP0064 to Hawai'i Pack and Paddle, LLC,  
Kealakekua Bay State Historical Park, South Kona, Hawaii, Tax Map Key: (3)8-1-011:  
001, 006, 010, 011, por.

REQUEST:

Termination of revocable permit No. SP0064 to Hawai'i Pack and Paddle, LLC.

LEGAL REFERENCE:

Sections 171-55 and other applicable sections of Chapter 171 and, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands at the Kealakekua Bay State Historical Park, Kealakekua (South Kona), Hawai'i, identified by Tax Map Key: (3) 8-1-011: 001, 006, 010, 011 por., as shown on the attached tax map key labeled Exhibit A.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This is merely a request for the termination of a previously issued revocable permit approved by the Board at its May 26, 2006 meeting (Agenda Item E-1), and as such, State Parks believes that this will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2 and 6 of the State Parks Exemption List which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].

REMARKS:

At its May 26, 2006 meeting (agenda Item E-1), the Board approved the issuance of revocable permits to four (4) named businesses for landing and launching kayaks at Ka'awaloa Flats at Kealakekua Bay State Historical Park. One of those revocable permits was issued to Hawai'i Pack and Paddle, LLC, (HPP) and was executed on May 30, 2008 and subsequently continued by the Board for additional one year periods. The most recent continuation of this revocable permit was approved by the Board at its December 9, 2011 meeting (agenda item E-1).

ITEM E-1

Based on a departmental investigation, staff finds that HPP violated three terms of the revocable permit on July 4, 2012:

1. HPP conducted a tour with thirteen (13) guests/passengers where paragraph B. 16 of the revocable permit allows only twelve (12);
2. HPP conducted a tour which exceeded the maximum time per landing of two and one half (2 ½) hours in violation of paragraph B.16 of the revocable permit; and,
3. HPP conducted a tour which deviated from the areas authorized under the revocable permit in violation of paragraphs A.3 and B.41.

In addition, staff has determined that HPP has under-reported the number of guests/passengers on July 4, 2012, as stated in its July 2012 report (Attached as Exhibit D), by indicating there were only 4 guests/passengers landed. In addition, the report contained mathematical errors which have also resulted in under-payment to DLNR.

DISCUSSION:

Pursuant to paragraph B(2) of the revocable permit, **“The Board may revoke and thereby terminate this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rent is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.”** Staff believes the three violations cited above constitute a material breach of the terms of the revocable permit and that the Board is within its rights to authorize the termination of the revocable permit. Staff recommends the revocable permit be terminated with thirty (30) calendar days written notice to be issued by the Chairperson.

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RECOMMENDATION: That the Board:

1. Declare that after considering the potential effects of the proposed action as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the termination of revocable permit SP0064 to Hawai'i Pack and Paddle effective upon thirty (30) calendar days written notice issued by the Chairperson.
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



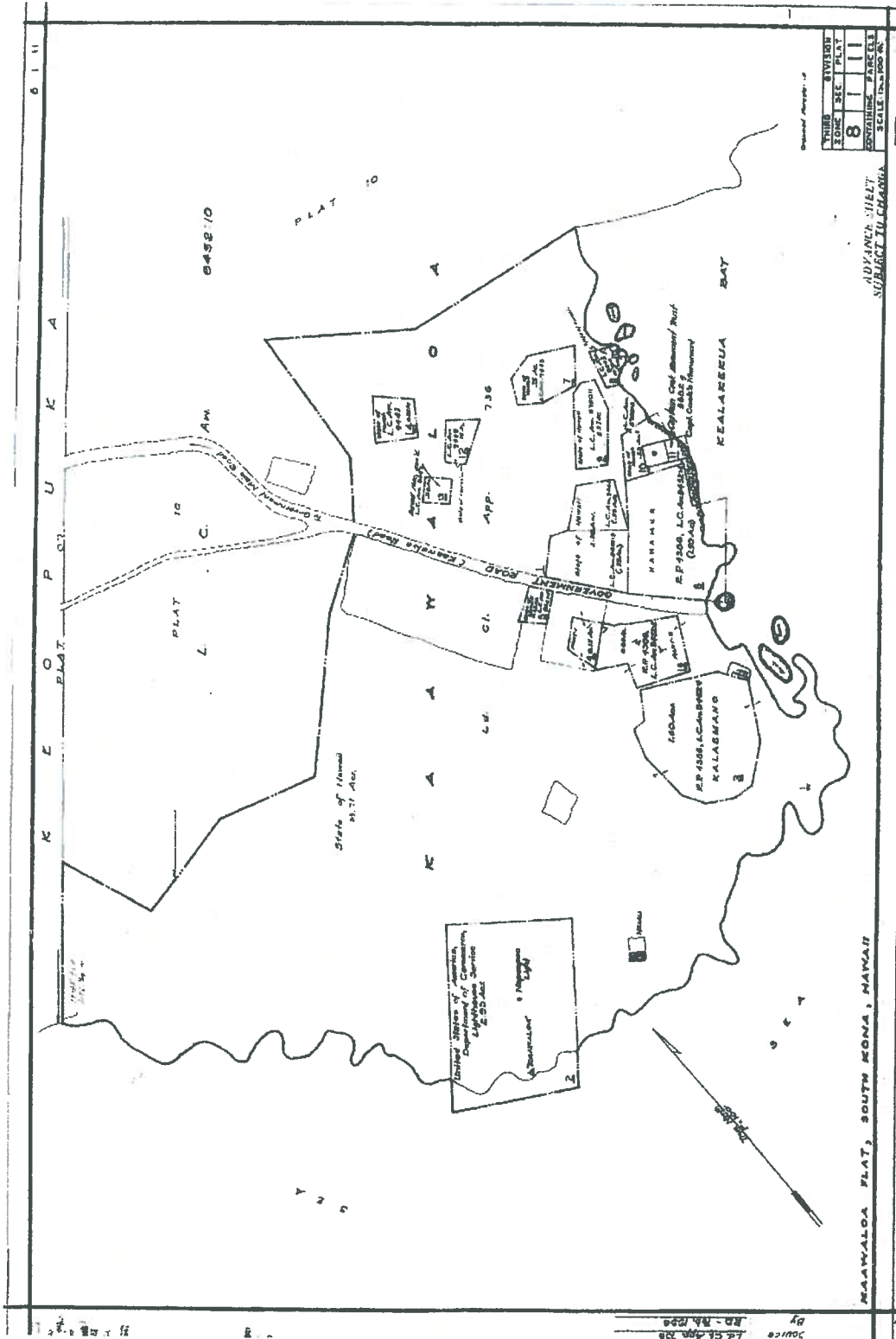
DANIEL S. QUINN  
State Parks Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson

Exhibit A - Tax Map Key



### EXHIBIT B – Notification of Exemption



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF STATE PARKS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. ILLA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
PAUL J. CONRY  
INTERIM 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 RESOURCE ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
HAWAIIAN ISLANDS RESERVE COMMISSION  
LAND  
STATE PARKS

#### EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

Project Title: Termination of Revocable Permit to Hawai'i Pack and Paddle, LLC.

Project / Reference No.: No. SP0064

Project Location: Kealahakua Bay State Historical Park, (South Kona), Hawai'i Tax Map Key: (3) 8-1-011: 001, 006, 010, 011 por.

Project Description: Revocable Permit for Kayak Landings at Ka'awaloa Flats

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 which exempts, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and within Numbers 2 and 6 of the State Parks Exemption List (Exemption Class 1) which exempts "Roads, road structures, roadways and trails – within developed, maintained portions of State Parks [February 5, 1976]" with respect to Number 2 and "Offices, baseyards, and ground – within developed, maintained portions of State Parks [February 5, 1976]" with respect to Number 6.

There are three (3) other permittees operating commercial kayak tours operating in this area under revocable permits issued by the Board of Land and Natural Resources. This request is to terminate one revocable permit and these permits have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As

Termination of Revocable Permit SP0064  
August 30, 2012  
Page two

such, staff believes that the proposed termination would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: DLNR/Division of Boating and Ocean Recreation

Recommendation: It is recommended that the Board find that this action will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila Jr., Chairperson

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Exhibit C - Revocable Permit No. SP0064

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF STATE PARKS

REVOCABLE PERMIT NO. SP0064

KNOW ALL MEN BY THESE PRESENTS:

This Agreement is executed this 30<sup>th</sup> day of May, 2008, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and Hawaii Pack and Paddle LLC hereinafter called the "Permittee," whose mailing address is [redacted] Capitol HI. The parties agree that commencing on the 1<sup>st</sup> day of June, 2008, ("commencement date"), Permittee is permitted to make commercial kayak landings with kayaks, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, for one and a half hours per landing twice a day, and for no other purpose, at the approved location at Kaawaloa within the Kealakekua Bay State Historical Park on the Island of Hawaii, State of Hawaii, which is identified and marked as sites "1", "2", "3", and "4" on Exhibit "A," attached hereto and made a part hereof, and is hereinafter referred to as the "Premises".

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. At a minimum, to be eligible for this Revocable Permit ("Permit"), meet the following criteria;
  - i. Be a duly organized business in good standing in the State of Hawaii or an individual over the age of eighteen;
  - ii. Hold a current Hawaii State General Excise Tax license;
  - iii. Hold a current Hawaii State tax clearance certificate;
  - iv. Have no outstanding complaint or unpaid fines for violations of any laws or rules administered by the Board; and
  - v. Meet the eligibility requirements of section 171-13, Hawaii Revised Statutes.

The Board may take into consideration whether the Permittee, its principals, subsidiaries or affiliates have a record of violations of any laws, rules, or permit conditions administered by the Board, in determining eligibility.

The Chairperson of the Board may require other qualifications of Permittee.

2. To be eligible for this Permit, the Permittee shall provide to the Department of Land and Natural Resources ("Department") prior to the execution of this Permit:
  - i. Statement of Permittee's background and experience with kayak tours and operations;
  - ii. Copy of Lifeguard, CPR and First Aid certifications;
  - iii. Tax Clearance Form A-6 with an original green stamp;



- iv. Copy of Permittee's Hawaii General Excise Tax License;
- v. Certificate of Good Standing from the Department of Commerce and Consumer Affairs; and
- vi. Certificate of Compliance, LIR form #27.

The Chairperson of the Board may require other qualifications of Permittee.

3. Occupy and use the Premises for the following specified purposes only:
- i. Land and launch kayaks at site "1" on Exhibit "A";
  - ii. Store kayaks at site "2" on Exhibit "A";
  - iii. Walk along and follow trail shown on Exhibit "A";
  - iv. Orientation, eating, resting and as a temporary "pop-up" portable toilet staging area at site "3" on Exhibit "A";
  - v. Enter and exit the bay at Captain Cook Monument concrete pier site "4" on Exhibit "A" for snorkeling and swimming only; and
  - vi. Provide emergency services, when feasible.
4. Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawai'i 96809, monthly rent as compensation for the use of the Premises in the sum of FIVE DOLLARS AND NO/CENTS (\$5.00) per guest/passenger per landing, payable within twenty (20) days after the end of the previous month of operation.

"Landing," means the use of the area by Permittee and Permittee's kayak passengers. Each operation consisting of the disembarking and embarking of the same kayak passengers at the Premises within the allowed ~~one~~ and a half hour time period shall constitute a separate landing under the terms of the Permit. Landings allowed by this Permit do not include the right to advertise or to solicit business in any way at the sites.

The interest rate on any unpaid or delinquent rentals shall be at one per cent (1%) per month.

If monthly rent is not received within twenty (20) days after the end of the previous month of operation then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge. Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

5. Upon execution of this Permit, deposit with the Board the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00), as security for the faithful performance of all of these terms and conditions.

The deposit will be returned to the Permittee upon termination of this Permit, whether by expiration or revocation, if and only if all of the terms and conditions



of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department. Otherwise, the deposit may, at the option of an authorized representative of the Department, be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.

6. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
7. At its own cost and expense, observe and comply with all laws, ordinances, rules and regulations of the federal, state, and county governments, which are now applicable or at any future time during the term of this Permit become applicable to the Premises, the use of kayaks, or commercial activities; and shall indemnify the State of Hawaii against all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules or regulations or of this covenant.
8. Conduct all activities under this Permit in a manner that leaves the Premises in a clean, sanitary, and orderly condition.
9. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
10. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, commercial general liability insurance, in the amount of one million dollars, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire Premises, including all areas used by Permittee and Permittee's guests/passengers in connection with the use of the Premises.

Prior to entry and use of the premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or non-renewed until after sixty (60) days written notice has been given to the State.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks, which exist at the time a change in insurance is required.

The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance certificate(s) shall be mailed to:  
State of Hawaii  
Department of Land and Natural Resources  
Division of State Parks  
P.O. Box 621  
Honolulu, Hawaii 96809

11. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorneys' fees, and expenses incurred by or imposed on the State.
12. Pay all costs, including reasonable attorneys' fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.
13. At all times with respect to the Premises and areas used in connection with the Premises, use due care for public safety.
14. Understand and hereby acknowledge that the Board does not warrant or represent that the Premises are safe or suitable for the purpose intended by the Permittee.
15. Understand and hereby acknowledge that there may or may not be dangerous conditions existing on the Premises and in the areas addressed in the Permit. Permittee expressly agrees to assume the risk of any personal injury, property damage, or loss of life or property resulting from or in any way connected with the Permittee's activities under this Permit.
16. Understand and hereby acknowledge that the Permit shall not allow the Permittee to drop off or pick up passengers for any reason whatsoever at any location other than the Premises.

17. Understand and hereby acknowledge that the use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age, HIV (Human Immunodeficiency Virus) infection or any other basis or in any manner that is prohibited by any applicable federal, state, or county law.
18. Understand and hereby acknowledge that the word "Permittee" as used herein shall include, whenever appropriate, agents, representatives, employees, heirs, executors, and administrators of the Permittee. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, unless approved by the Board, whose approval, in its sole discretion, may be withheld and made subject to the new Permittee meeting the Division of State Parks' and the Division of Boating and Ocean Recreation's permit requirements. Any sale, assignment, conveyance, lease, mortgage or transfer of this Permit without Board approval shall result in automatic termination of this Permit. The issuance of this Permit conveys no future rights or guarantees or in any way obligates the State, Board, or Department to issue future permits.
19. Understand and hereby acknowledge that unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.
20. Understand and hereby acknowledge that prior to entry and use of the Premises Permittee shall obtain a Launch Ramp permit from the Division of Boating and Ocean Recreation that would allow Permittee to launch and land kayaks at Napoopoo Landing/Pier. However, this Permit does not promise or guarantee that the Permittee will be able to obtain a launch ramp permit and does not give the Permittee any priority in obtaining a launch ramp permit.

**B. Additional Conditions:**

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically expire and terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises.

2. The Board may revoke and thereby terminate this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rent is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.
3. If the Permittee fails to vacate the Premises upon the termination of the Permit, whether by expiration or revocation, the Permittee shall be subject to all penalties and remedies of the Board provided by law.
4. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent.
5. The Board reserves for its agents or representatives and members of the public the right to enter or cross any portion of the Premises at any time allowed under the law. Permittee understands and accepts that this Permit is non-exclusive.
6. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
7. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
8. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board whose decisions shall be final and binding on the parties.
9. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and

belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

Permittee agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the use or release of hazardous materials on the premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the permit.

For the purpose of this permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

10. Permittee shall indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.
11. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
12. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.

13. The Permittee shall submit a monthly report to be compiled on a daily basis and submitted no later than twenty (20) days after the end of each month to the Property Manager of the Division of State Parks on the total number of kayakers and landings and amount of gross revenue.

The monthly report shall also identify all rescue or emergency landings made and any other information that may, from time to time, be required by the Department for monitoring recreational and other uses of the Premises.

14. The Permittee shall assist the Department in monitoring the commercial kayak operations and other activities at the landing site approved by this Permit and report any landings by unauthorized commercial kayaks and suspected law or rule violations to the Department.
15. Landings, except for rescue or other emergency purposes, shall only be made at the Awili landing site designated and marked by the Division of State Parks at the Premises. No landings shall occur at the Captain Cook Monument or any other area of the Kealahou Bay State Historical Park unless specifically authorized in writing by the Chairperson of the Board nor shall the Permittee drop off or pick up paying passengers who swim to or from these shores except in emergency situations.
16. Landings at Premises may not exceed twelve (12) guests/passengers and eight (8) kayaks per trip, and each landing at Premises shall not exceed <sup>two</sup> ~~one~~ and a half hours. A maximum of twelve (12) guests/passengers and eight (8) kayaks shall be assigned to one (1) guide. The kayak guides are expected to stay with the kayakers and all kayakers shall leave the park with the tour group.
17. Permittee is limited to a maximum of two trips with one landing per trip per day. The timing for the beginning and ending of each trip shall be coordinated between the Permittee and the Department.
18. The Permittee shall provide at its own expense, temporary "pop-up" portable toilets for use at Premises within an area designated by the Chairperson. All portable toilets must be removed by the Permittee at the end of each day. All waste from the toilets must be properly disposed of by Permittee (for example, the waste shall not be thrown into the ocean water or left on state land).
19. The sites addressed by this Permit are public lands. The rights of the Permittee under this Permit shall at all times be subordinate to the rights of the public in the use of said sites. Permittee shall not displace the public or block off, rope off, or otherwise restrict public use or access to the Premises or any of the areas addressed by this Permit.
20. The Permittee shall not allow any of its employees, guides, passengers, guests or invitees to disturb any archeological sites. The Permittee shall not allow any of

its employees, guides, passengers, guests or invitees to enter any restricted (*kapu*) areas. Any changes or disturbances to archeological sites shall be reported immediately to the Department. Prior to the first landing, the Permittee shall be briefed on site by a State Parks archaeologist to ensure that the Permittee understands and can identify restricted areas and archaeological sites in or near the landing and permitted use areas.

21. The Permittee shall not allow any of its employees, guides, passengers, guests or invitees to touch or stand on coral reefs.
22. The Permittee shall not allow any of its employees, guides, passengers, guests or invitees to feed any marine species.
23. No Permittee or its employees, guides, passengers, guests or invitees, at any time, shall attempt to swim with, pet, touch or elicit a reaction from any marine mammal(s).
24. All of Permittee's operations must fully comply with all federal and state historic preservation and wildlife protection laws, rules and regulations.
25. Permittee's guides must maintain current certification in Cardio-Pulmonary Resuscitation techniques (CPR), Lifeguard Training and Standard First Aid by the American Red Cross or other nationally recognized certification agency, and any other certifications as may be determined and required by the Chairperson of the Board.
26. Permittee's guide kayaks shall each carry and be equipped with the following safety gear:
  - i. 50' Tow Line;
  - ii. Knife;
  - iii. Whistle;
  - iv. Arial Flare;
  - v. First Aid Kit;
  - vi. Bow and Stern Line;
  - vii. Flashlight; and
  - viii. 2-Way Radio or cell phone (with direct communication with land-based operations).
27. Permittee's guest kayaks shall each carry and be equipped with a Bow and Stern Line and Whistle.
28. During kayak tours, guides shall have the ability to be in radio or cell phone communication with at least one land-based person at Napoopoo Landing/Pier.
29. Prior to entering the water, Permittee shall give to each passenger, guest or invitee, a safety briefing apprising them of the following:

- i. Entering and exiting a kayak while on the water;
- ii. Righting a capsized kayak;
- iii. Purpose of each gear and importance of using life vests; and
- iv. Proper paddling techniques including back paddling and steering.

Guests and guides, prior to commencing on the tour, shall practice these techniques.

30. Prior to or at the initial contact with the Premises, Permittee shall give each guest/passenger a natural and cultural briefing approved by the Chairperson of the Board, apprising each guest/passenger of the importance and significance of the area's natural and cultural resources.

The briefing shall also inform each guest/passenger that they are required to pack/carry out what they pack/carry into the park. The Permittee shall be responsible for collecting and properly disposing of all trash from the passengers at the end of the trip.

The briefing shall also summarize safe marine wildlife watching techniques and the need for compliance with state and federal marine wildlife rules and guidelines.

31. Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, the Permittee shall submit for approval by the Chairperson of the Board, a written plan of operation for landings and use of the Premises.
32. Permittee must provide a weight appropriate Personal Flotation Device (PFD) for each guest/passenger.
33. Permittee shall have a copy of the Revocable Permit at all times when using the Premises and shall produce it upon request.
34. Permittee's employees or agents shall wear, in a clearly visible location on the body clothing, a nametag identifying the name of the Permittee and name of the employee or agent.
35. No signage noting the Permittee or the activity permitted under this Revocable Permit shall be displayed on the Premises.
36. No financial transactions shall be conducted on the Premises, including rental or sales of kayaks or other equipment or solicitation of rental/tours. No sales activity of any kind shall be allowed on the Premises.



37. The Board reserves the right to deny issuance or re-issuance of a revocable permit to anyone and the right to issue revocable permits for Kealakekua Bay State Historical Park as it deems appropriate.
38. Permission to land at sites described by this Permit shall be non-exclusive. Similar rights may be granted to other commercial operators. In addition to other commercial operators, the public kayakers independent of any commercial tours still maintain the right to access Ka'awaloa.
39. Launching and landing shall be conducted only at the Awili at the location marked on Exhibit "A" as site "1". Permittee will land first and place a bamboo or similar material landing pad against the lava surface when kayaks are brought on shore. Permittee will then assist guests/passengers with the landing procedure as well. Launching shall follow a similar procedure.
40. Once Permittee has landed, all kayaks must be carried (not dragged) to the temporary storage area near the terminus of Kaawaloa Road marked on Exhibit "A" as site "2". Prior to the first landing, the Permittee shall meet on site with a State Parks archaeologist to determine the specific location and spatial extent of the temporary storage area. Kayaks may be stored for a maximum of ~~one~~ <sup>two</sup> hours.
41. Permittee shall follow the existing marked trail (shown on Exhibit "A") from the Awili (site "1") through the open area to the Captain Cook Monument (site "4"). Permittee is confined to the Awili (site "1"), trail, open area (site "3"), and water entry/exit point at Captain Cook Monument concrete pier (site "4") only. Permittee may not deviate from the marked trail and must use the areas along the trail only for activities described below or by approval of the Chairperson of the Board. After issuance of the permit, State Parks may realign the existing marked trail or establish an alternative marked trail based on observed user impacts or use patterns.

The open area is marked as site "3" on Exhibit "A". The open area shall be used for orientation, eating, resting and as a temporary "pop-up" portable toilet staging area and for no other purposes. Prior to the first landing, the Permittee shall meet on-site with a State Parks archaeologist to identify specific areas in which these activities will occur and the location of the portable toilet. State Parks will periodically assess user impacts and may designate alternative areas for these activities or request changes to on-going practices. If any changes are needed, State Parks will notify the Permittee of these changes by written notice and will conduct a field briefing with the Permittee to identify any alternative use areas or discuss changes in practice. Written notice will include an amended "Exhibit A" if applicable.

The water entry/exit point at Captain Cook Monument concrete pier is marked as site "4" on Exhibit "A". Permittee may enter and exit the bay for swimming and

snorkeling only and only from the entry/exit point via a portable ladder provided by the Permittee. The portable ladder must be removed after each tour.

42. Permittee may not modify the Kaawaloa site by planting new plants, moving rocks or erecting any temporary or permanent structures (temporary "pop-up" portable toilets described under "additional conditions," paragraph 18, excluded).
43. Permittee must adhere to all procedures developed by the Division of State Parks for Kaawaloa and Kealakekua Bay State Historical Park that may be needed to address unanticipated user impacts or conflicts. The Division of State Parks shall notify the Permittee in writing if such procedures are being developed and when they would take effect. State Parks shall conduct a field briefing with the Permittee to clarify procedures developed after the permit is issued.
44. Upon termination of the Permit, whether by expiration or revocation, the Board, by its agents or representatives, may remove, store, or dispose of any kayaks, equipment, personal items, etc., left by Permittee or its guests/passengers on the Premises or in any area addressed by this Permit at the sole cost and expense of the Permittee, and the Permittee agrees to pay for all such costs and expenses.
45. Prior to the start of any tour, Permittee shall visually inspect all equipment for any defects or damage.
46. Permittee is required to remove litter accumulations at the Premises four (4) times per year as coordinated by Division of State Parks staff.
47. Permittee understands and hereby acknowledges that other uses of the Premises by other entities may occur and that use of the Premises is not exclusive. Permittee agrees to work cooperatively with other entities allowed by the Department to conduct activities on the Premises to avoid conflicts on the Premises.
48. Pursuant to HAR section 13-146-4, the board or its authorized representative may close or restrict the public use of all or any portion of a state park, when necessary for the protection of the area or the safety and welfare of persons or property.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

Approved by the Board of  
Land and Natural Resources  
at its meeting held on May 26, 2006.

STATE OF HAWAII

By   
Chairperson of the Board of Land and  
Natural Resources

APPROVED AS TO FORM:

  
Deputy Attorney General

Dated: 5/29/08

PERMITTEE Hawai'i Pack and Paddle LLC

By Betsy Monigan  
Its Manager

April 9, 2008  
BBM

FINE

STATE OF HAWAII            )  
  ) SS.  
COUNTY OF                    )

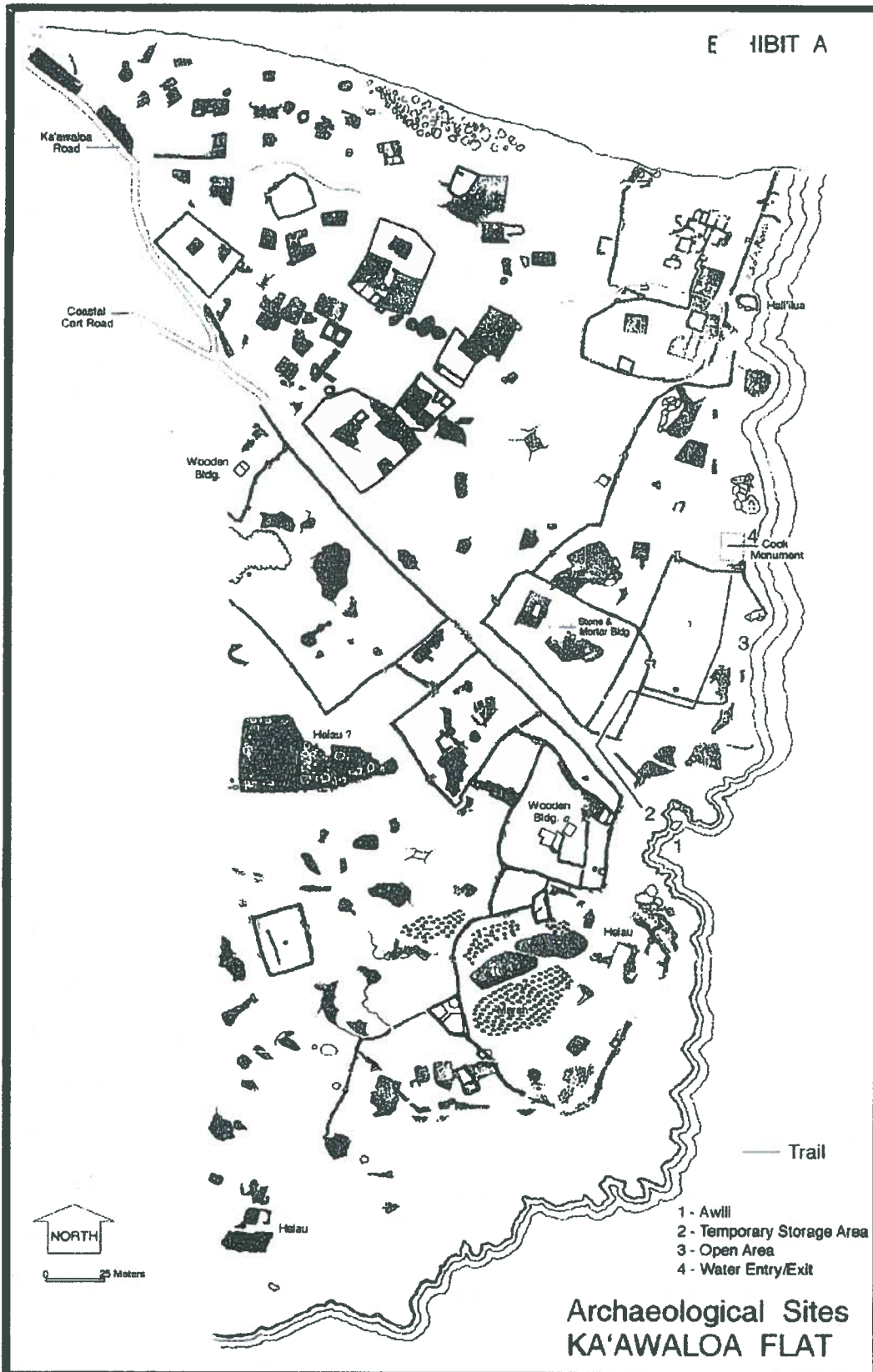
On this 9<sup>th</sup> day of April, 2008, before me personally appeared Betsy Morrison and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

Kiana E. Freitas  
\_\_\_\_\_

My commission expires: 11.20.2009

L.S.



	Start Time 1 Adventure Paradise	Start Time 1 Hawaii P&P	Start Time 2 Adventure Paradise	Start Time 2 Hawaii P&P
7:00 AM				
7:30 AM				
8:00 AM				
8:30 AM				
8:45 AM				
9:00 AM				
9:15 AM				
9:30 AM				
9:45 AM				
10:00 AM				
10:15 AM				
10:30 AM				
10:45 AM				
11:00 AM				
11:15 AM				
11:30 AM				
11:45 AM				
12:00 PM				
12:15 PM				
12:30 PM				
12:45 PM				
1:00 PM				
1:15 AM				
1:30 PM				
2:00 PM				

- Set-up/Break-down at Napo'opo'o Pier
- Launch/Land at Napo'opo'o Pier
- Paddle Across Kealahou Bay
- Launch/Land at Ka'awaloa
- Ka'awaloa Narration/Snorkel/Lunch/Monument Visit

Hawaii Pack and Paddle: Two Morning Slots: 9:00 and 9:30 A.M.  
 Adventures in Paradise: Two Morning Slots: 9:00 and 9:30 A.M.

Exhibit D - July 2012 Report SP0064

RECEIVED  
STATE PARKS '12

'12 AUG 27 P2:19



DEPT OF LAND &  
NATURAL RESOURCES

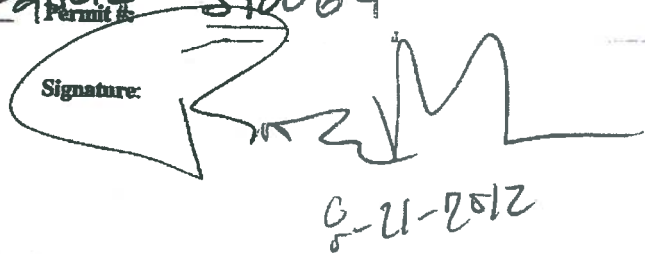
State of Hawaii  
Department of Land and Natural Resources

Commercial Kayak Patron Data Sheet  
Kealahou Bay State Historical Park

Please submit this form with monthly remittance check.

Company: Hawaii Pack + Paddle Permit # SP0064

Month: July 2012

Signature:   
8-21-2012

Date	# of Patrons	Total @ \$5 per Patron
1		
2	02	10
3	2	10
4	4	20
5	2	10
6	5	25
7	2	10
8	2	10
9	2	10
10	6	30
11	4	20
12	4	20
13	3	15
14	10	50
15	4	20
16	5	25
17	3	15
18		
19	4	20
20		
21		
22	2	10
23	14	70
24	9	45
25	6	30
26	9	45
27	16	80
28	2	10
29	7	35
30	15	75
31	13	65
Total	178	865