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

August 23, 2013

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

PSF No.: 13MD-009
MAUI

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

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

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

2) Order that in the event that KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, shall conduct unauthorized commercial activities on unencumbered State lands after the date of today’s Board action, KRS Investments LLC, dba South Pacific Kayakers & Outfitters, and Tiki Team Adventures, shall be fined $1,000 for each day or part thereof that such activities occur.

A copy of the submittal is attached as Exhibit A. Petitioner orally requested a contested case hearing before the close of the meeting on July 12, 2013. On July 22, 2013, the Department received three petitions for contested cases from attorney Thomas Cole, on behalf of KRS Investments LLC, South Pacific Kayaks and Outfitters and Tiki Team Adventures, pursuant to Hawaii Administrative Rules 13-1-29 and 13-1-31.1. Copies of the petitions are attached as Exhibit B, C and D respectively. After
consultation with the Department of Attorney General, the Department is recommending that the petitions be granted. Given that all three petitioners are, for all intents and purposes, a single entity, staff recommends that all three petitions be consolidated into a single contested case hearing.

RECOMMENDATION: That the Board:

1) Grant the petitions and authorize a single contested case consolidating the petitions as to the findings against KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures.

2) Authorize appointment of a Hearing Officer to conduct hearings relevant to the petitions as provided by law.

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

Respectfully submitted,

Ian Hirokawa
Project Development Specialist

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 12, 2013

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

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

PURPOSE:

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

LEGAL REFERENCE:

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

LOCATION:

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

CURRENT USE STATUS:

State Beach Reserve, currently vacant and unencumbered.

RESPONSIBLE:

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

EXHIBIT "A"
Address: Kihei, HI 96753

VIOLATION:

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

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

Maui DOCARE report number MA-12-060
Officer Joshua Rezentes
Date: 7/17/2011
Contact and warning was issued to South Pacific Kayaks employee on 7/20/2011. Report attached as Exhibit #2

AGENCY COMMENTS:

A request for comment was solicited from the following agencies:

<table>
<thead>
<tr>
<th>Agency</th>
<th>Comments</th>
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<tbody>
<tr>
<td>County of Maui – Dept. of Parks &amp; Rec.</td>
<td>No objections</td>
</tr>
</tbody>
</table>
| County of Maui – Planning (Zoning) | No objections
|                              | No comments    |
| DLNR – Maui DOCARE          | No response    |
| DLNR – Maui DOBOR           | No objections
|                              | No comments    |

REMARKS:

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

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

**EXHIBITS:**

Exhibit #1 - Photo report dated 1/11/2013

Exhibit #2 - Maui DOCARE report # MA-12-060, submitted by Officer Joshua Rezentes. (Warning Issued to Owner Roger Simonot)

Exhibit #3 - Information provided by Suzanne Dorn, complainant (permitted commercial vendor).

**RECOMMENDATION:** That the Board:

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

2. Order that in the event KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, shall conduct unauthorized commercial activities on unencumbered State lands after the date of today's Board action, KRS
BLNR - Issuance of Fine
For Unauthorized Commercial
Activities

July 12, 2013

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

Respectfully Submitted,

[Signature]
Daniel Ornelas, District Land Agent

APPROVED FOR SUBMITTAL:

[Signature]
William J. Aila Jr., Chairperson
Photos depict South Pacific Kayak's personnel utilizing unencumbered State land along the shoreline to conduct commercial activities without authorization or permit.
Olowalu Beach Reserve signs listing prohibited activities which include

No Commercial Activities.
INVESTIGATION REPORT

1. REPORT NUMBER
   MA-12-060

2. INVESTIGATOR
   REZENTES, Joshua

3. DISTRICT
   OLOWALU

4. ISLAND
   MAUI

5. COMPLAINANT
   [Full Name, If Business]
   OFC. J. REZENTES

6. SEX
   M

7. RACE
   DNA

8. AGE
   DNA

9. OCCUPATION
   CREO III

10. LOCATION OF OffENSE AND CLOSEST INTERSECTING STREET
    OLOWALU BEACH RESERVE

11. DATE/TIME OCCURRED
    7/17/11 07:30 HOURS/SUN

12. DATE/TIME REPORTED
    7/17/11 07:30 HOURS

13. HOW REPORTED
    PHONE

14. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISES
    OLOWALU BEACH RESERVE

15. SCHOOL ATTENDING
    DLNR/DOCARE

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

17. REGISTERED OWNER
    Name DNA
    Address DNA
    Res. Phone DNA

18. W = Witness
    S = Suspect (Fill In Composite Description)
    R = Reporting Person
    O = Other

19. NAME
    VICTORIA KALUNA-PALAFAX
    Age
    Sex
    Code
    Address
    Res. Phone
    Bus. Phone
    SAME

    PETER HAMILTON
    Age
    Sex
    Code
    Address
    Res. Phone
    Bus. Phone
    SAME

    SOUTH PACIFIC KAYS
    Address

20. SEX
    Composite Description Race
    Age
    WT.
    Build
    Hair
    Eyes
    Complex
    Birthday
    Hair or SS#: DNA

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

Synopsis

On the above mentioned date and time I was assigned by Officer R. DECAMBRIO to investigate a land management case at Olowalu Beach Reserve. Contact was made with reporting person VICTORIA KALUNA-PALAFAX via phone who related that she had observed numerous kayaks on the beach. I conducted checks at the mentioned location where I did not observe any kayaks on the beach or kayak tour guides only their vehicles. Two trucks were marked with "South Pacific Kayaks" while two other vehicles had trailers attached but no company label. On 7/17/11 I conducted a follow up check where I made contact with Peter HAMILTON who was a kayak tour guide for "South Pacific Kayaks." I explained to HAMILTON that I had received a complaint regarding kayaks on the beach a few days prior and that although I did not observe any today, two trucks from "South Pacific Kayaks" were observed when the violation was occurring. I further explained to him that it was against the law for any company to lay there kayaks on the beach. HAMILTON related that he understood and that he would apprise his co-workers and other companies about this. Request report be forwarded to Land Division for review.

ASSIGNMENT:

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

REPORTING PERSON CONTACTED:

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

CHECKS CONDUCTED:

At approximately 0830 hours, I conducted checks at the mentioned location where I did not observe any kayaks on the beach or any kayak tour guides, only their vehicles. Two trucks were marked with "South Pacific Kayaks" while two other vehicles had trailers attached but no company label. Checks with Maui Police Dispatch revealed that the vehicles belonged to Paul Noble with an address of Hana Hwy 96790 (S1-TPD) and Derek Quale Kula 36-3 (736-MDE). I waited for approximately one hour for the kayak tours to return however, they did not.

22. REPORTING OFFICER
    REZENTES, Joshua
    Badge No. 174
    Date/Time 7/27/11 11:00 HRS

23. REPORTING SUPERVISOR
    RODRIGUES, Howard
    Badge No. 248

24. DISTRIBUTION
    [Redacted]
    [Redacted]
    [Redacted]
    [Redacted]
    [Redacted]
    [Redacted]

25. Date/Time Reproduced
    7/27/11 11:00 HRS

EXHIBIT 2

Page 10 of 5
CASE NUMBER: MA-12-060

CLASSIFICATION: LAND MANAGEMENT

SCENE: OLOWALU BEACH RESERVE

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

PHOTO TAKEN BY: OFC. J. REZENTES

DESCRIPTION OF PHOTOS:

PHOTO #1 DEPICTS SIGN STATING NO COMMERCIAL ACTIVITY

PHOTO #2 DEPICTS UNKNOWN KAYAK COMPANY WITH TRAILER ATTACHED.
PHOTO #3 DEPICTS LICENSE PLATE OF VAN FROM UNKNOWN KAYAK COMPANY. (REGISTERED OWNER IS PAUL NOBLE)

PHOTOS #4 AND #5 VEHICLES LABELED WITH "SOUTH PACIFIC"
PHOTO #5 AND #6 DEPICTS UNKNOWN KAYAK COMPANY WITH TRAILER DETACHED (REGISTERED OWNER IS DERREK QUALE)
PHOTOS:

Refer to photo report.

FOLLOW UP CHECKS CONDUCTED:

On 7/20/11 I conducted follow up checks where I made contact with male who was identified as Peter HAMILTON who was a kayak tour guide for "South Pacific Kayaks." I explained to HAMILTON that I had received a complaint regarding kayaks on the beach a few days prior and that although I did not observe any today, two trucks from "South Pacific Kayaks" were observed when the violation was occurring. I further explained to him that it was against the law for any company to lay there kayaks on the beach. HAMILTON related that he understood and that he would apprise his co-workers and other companies about this.

ADDITIONAL INFORMATION:

Victoria Kaluna-PALAFOX was contacted on two separate occasions and informed that I did not receive any photos via e-mail from her regarding this case. As of 7/27/11 no photos were received regarding this incident.

DISPOSITION:

Request report be forwarded to Land Division for review.
December 8, 2012
ILLEGAL SURF, SUP, KAYAK, SCHOOL OPERATING ON STATE BEACHES, COUNTY BEACHES AND UNENCUMBERED LAND

Company Name: SOUTH PACIFIC KAYAKS AKA TIKI TOURS
Name of Owner: Roger Simonet
Phone: 1-800-776-2326
website: www.southpacifickayaks.com
www.gokayakingmaui.com

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

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

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

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

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

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

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

1. File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

   Department of Land and Natural Resources
   Administrative Proceedings Office
   1151 Punchbowl Street, Room 130
   Honolulu, Hawaii 96813
   Phone: (808) 587-1496, Fax: (808) 587-0390

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.

<table>
<thead>
<tr>
<th>A. PETITIONER</th>
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<tbody>
<tr>
<td>1. Name</td>
<td>KRS Investments, LLC</td>
</tr>
<tr>
<td>2. Contact Person</td>
<td>Roger Simonot</td>
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<tr>
<td>3. Address</td>
<td></td>
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<td>4. City</td>
<td>Kihei</td>
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<td>5. State and ZIP</td>
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<td>6. Email</td>
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<td>7. Phone</td>
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<th>B. ATTORNEY (if represented)</th>
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<td>9. Attorney Name</td>
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<td>10. Firm Name</td>
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<td>16. Fax</td>
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17. Board Action Being Contested

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

18. Board Action Date
July 12, 2013

19. Item No.
PSF#13MD-009

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

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

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

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

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

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

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

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

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

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

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

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

[Signature]
Petitioner or Representative (Print Name)

1-19-2018
Date
STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY

<table>
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<th>Division/Office</th>
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A. PETITIONER
   (If there are multiple petitioners, use one form for each.)

<table>
<thead>
<tr>
<th>1. Name</th>
<th>2. Contact Person</th>
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<tbody>
<tr>
<td>South Pacific Kayaks &amp; Outfitters</td>
<td>Roger Simonot</td>
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<th>3. Address</th>
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B. ATTORNEY (if represented)

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<tr>
<th>9. Attorney Name</th>
<th>10. Firm Name</th>
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<tbody>
<tr>
<td>Thomas R Cole</td>
<td>Thomas R. Cole Attorney at law</td>
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<th>16. Fax</th>
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<td></td>
<td>(808) 244-5460</td>
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C. SUBJECT MATTER

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18. Board Action Date
July 12, 2013

19. Item No.
PSF#13MD-009

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

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

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

Thomas C Cole
Petitioner or Representative (Print Name)

Thomas C Cole
Signature

7-19-2013
Date

FORM APO-11
Page 2 of 2
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   1. Name
      Ti ki Team Adventures

   2. Contact Person
      Roger Simonot

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      HI 96753

   6. Email

   7. Phone
      808-270-2699

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B. ATTORNEY (if represented)

   9. Attorney Name
      Thomas R Cole

   10. Firm Name
       Thomas R. Cole

   11. Address

   12. City
      Wailuku

   13. State and ZIP
       HI 96793

   14. Email

   15. Phone

   16. Fax
       (808) 244-5460
17. Board Action Being Contested

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

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<td>July 12, 2013</td>
<td>PSF#13MD-009</td>
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20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

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

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

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

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

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

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

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

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

The Petitioner is the aggrieved party charged with the violation. The Petitioner is a proper party under HAR Section13-1-31.

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

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

[Signature]
Petitioner or Representative (Print Name)

[Signature] 7-10-2013
Date