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

February 14, 2014

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

PSF#13MD-180
Maui

Impose a $1,000.00 Fine, and $420.00 in Administrative Costs Against Island Adventure Tours, LLC, dba Kelii’s Kayak Tours, for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, at TMK: (2) 4-8-003:001.

PURPOSE:

Imposition of fine and administrative costs for the unauthorized commercial use of unencumbered lands by Island Adventure Tours, LLC (dba. Kelii’s Kayak Tours).

LEGAL REFERENCE:

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

LOCATION:

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

CURRENT USE STATUS:

State Beach Reserve, currently vacant and unencumbered.

RESPONSIBLE:

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

VIOLATION:

On October 18, 2013 at 7:00am, while conducting checks of State lands in the Olowalu area,
Maui Land Agent Larry Pacheco observed three vehicles parked at a location known for unauthorized commercial activities. Upon pulling over and parking, there were two vehicles with large trailers loaded with kayaks attached. After exiting his vehicle Pacheco observed a total of six kayaks laid out on the ground next to a trailer attached to a green Nissan X-Terra multipurpose vehicle, license number MKU-624. Three men were observed to be standing to the rear of a white full size truck. Immediately after Land Agent Pacheco retrieved his camera, one of the men began picking up his kayaks off the ground and proceeded stacking them against one of the trailers. The male, who was later identified as Scott Burbey, appeared very agitated as he stacked the kayaks and later began to load the kayaks onto the trailer. Mr. Burbey became argumentative, stating that Land Agent Pacheco was not in uniform, and had no badge or authority to stop them from conducting their business operation. Pacheco pointed out the state photo identification badge clipped on to the front of his shirt and verbally identified himself. Mr. Burbey was then reminded of a prior encounter on August 29, 2013, where he was briefly told not to leave equipment stored on State land while waiting for clients to arrive. No report was documented then because Pacheco was in the process of addressing a violation from another larger group. At that time, Mr. Burbey had left the area prior to completion of the investigation with the other company. Therefore, Pacheco was unable to ascertain the company Burbey was affiliated with.

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

PRIOR BOARD ACTIONS:

By its action on June 28, 2013, under Item D-9 the Board of Land & Natural Resources approved and amended actions relative to a commercial violation which occurred in 2008 involving the subject activity. The Board decided to amend recommendation number 1 by deleting the $1,000.00 fine and the $420.00 administrative costs. Also, the Board did direct staff to continue their inspections and investigations of unencumbered lands for unauthorized commercial activities. A copy of the submittal approved as amended is attached as Exhibit A.
Prior to the close of the June 28, 2013 Board meeting, Kelii’s Kayak Tours requested a contested case. Kelii’s Kayak Tours, through their legal counsel Mr. Thomas Cole, submitted a petition on July 8, 2013. Pursuant to staff’s recommendation, the Board granted the petition for contested case at its meeting on August 9, 2013 under Agenda Item D-11. A copy of the submittal approved as amended is attached as Exhibit B.

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

ADDITIONAL INFORMATION:

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

REMARKS:

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

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

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

(B) Fined not more than $10,000.00 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional $2,000.00 per day per violation may be assessed for each day in which the violation persists.
The Maui District Land Office has been dealing with the problem of commercial operators who, after obtaining a C.O.R.A permit for a designated County Park area, are moving their business operations out of their permitted area onto adjacent State unencumbered lands. The relocation was normally due to changes in weather conditions which negatively affected their tour operations, or because of carrying capacity problems at the assigned and permitted park locations. It appears now that the operators are simply choosing to utilize the Olowalu site as their primary location for their kayak tours as indicated in advertisements and the daily use of the area by multiple vendors.

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

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

**EXHIBITS:**

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

**RECOMMENDATION:** That the Board:

1. Find that Island Adventure Tours, LLC, dba Kelii’s Kayak Tours, violated the provisions of Chapter 171-6, Hawaii Revised Statutes, and Hawaii Administrative Rules 13-221-35, Commercial Activities, by conducting unauthorized commercial activities on unencumbered State land and order payment of a fine of $1,000.00 and $420.00 in administrative costs within thirty (30) days of the date of the Board's action of today’s date. The fine and administrative costs shall be paid to the Department of Land and Natural Resources.

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

Respectfully Submitted,

[Signature]

Daniel Ornellas, District Land Agent

APPROVED FOR SUBMITTAL:

[Signature]

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

June 28, 2013

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

PSF#13MD-051
Maui

Impose a $1,000.00 Fine and $420.00 in Administrative Costs Against Island Adventure Tours, LLC, dba Kelii’s Kayak Tours, for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, at TMK: (2) 4-8-003:001.

PURPOSE:

Imposition of fine and administrative costs for the unauthorized commercial use of unencumbered lands by Island Adventure Tours, LLC, dba Kelii’s Kayak Tours.

LEGAL REFERENCE:

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

LOCATION:

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

CURRENT USE STATUS:

State Beach Reserve, currently vacant and unencumbered.

RESPONSIBLE:

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

Approved by the Board of Land and Natural Resources at its meeting held on June 28, 2013.

EXHIBIT A
VIOLATION:

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

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

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

Previously documented warning and complaint against Keliʻi’s Kayaks Tours:

Maui DOCARE report number MA-09-389
Officer Brooks Tamaye
Date: 9/15/2008
Contact made and warning issued to owner Brian Yesland and employee Jeremiah Redins on 9/15/2008.
Report attached as Exhibit #1

By: Land Agent Larry Pacheco
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>
</tr>
</thead>
<tbody>
<tr>
<td>County of Maui – Dept. of Parks &amp; Rec.</td>
<td>No objections</td>
</tr>
<tr>
<td>County of Maui – Planning (Zoning)</td>
<td>No objections, No comments</td>
</tr>
<tr>
<td>DLNR – Maui DOCARE</td>
<td>No response</td>
</tr>
<tr>
<td>DLNR – Maui DOBOR</td>
<td>No objections, No comments</td>
</tr>
</tbody>
</table>

REMARKS:

Staff believes the assessment of a fine is warranted given Island Adventure Tours, LLC, dba Kelii’s Kayak Tours’ history of violations. The fine will serve as a deterrent to any future unauthorized activity.

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

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

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

EXHIBITS:

Exhibit #1 - Maui DOCARE report # MA-09-389, submitted by Officer Brooks Tamaye. (Warning Issued to Owner / Manager Brian Yesland)

Exhibit #2 - Land Division Complaint dated 10/15/2008, submitted by Land Agent Larry Pacheco.

Exhibit #3 - Business advertisements which were retrieved from the internet for Kelii’s Kayak Tours. Advertisements indicate that Island Adventure Tours, LLC, dba Kelii’s Kayak Tours continue to operate their commercial business operations from multiple locations (public lands) without authorization.

Exhibit #4 - Photo of the posted Olowalu Beach Reserve sign and prohibited activities sign where the commercial activities are being conducted.

RECOMMENDATION: That the Board:

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

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

Respectfully Submitted,

[Signature]

Daniel Ornellas, District Land Agent
Land Board Meeting: June 28, 2013: D-9: Approved as Amended:

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

---

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

**CLASSIFICATION**
LD: PROHIBITED COMMERCIAL ACTIVITIES

5. COMPLAINANT (First Name, Middle Initial, Last Name) B. TAMAYE

6. SEX RACE AGE M

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

12. DATE/TIME OCCURRED 09-15-08/0730HRS/MON

---

**VEHICLE INVOLVED**
Make: ISUZU
Model: Rodeo
Color(s): Gray
License No.: MMT-123
I.D. Characteristics: Trailer plates 688 MUL

**BOAT INVOLVED**
Length: 16'3"
Make: Model: Color(s): Name: HA No.: I.D. Characteristics

**REGISTERED OWNER**
Address: Res. Phone: 874-7652

---

**NAME**
REDINS, Jeremiah 37 M S 874-7652

YESLAND, Brian O

---

**SEX**
A/C/M

---

21. INVESTIGATION: 1. Present a synopsis of the crime or incident. 2. Summarize the details of the crime or incident. 3. Denote persons from whom statements were taken and who took them. 4. Identify additional suspects and witnesses. 5. Identify additional responsibilities. 6. Use opposite side for continuation of report, if necessary.

**Synopsis**
On 09-15-08, REDINS observed conducting commercial kayak tour. REDINS stated he worked for Keliis Kayak Tours owned by Brian YESLAND. Warnings issued for violation.

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

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

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

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

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

**DISPOSITION:**
Pending

---

22. REPORT WRITTEN BY: Brooks Tamaye Badge No. 221 Date/Time 091508/1345 hrs.

23. SUPERVISOR APPROVES:

24. DISPOSITION: Unfounded No Amast/No Prosecution Adult Arrested/Prosecuted Juvenile Other/Amast

26. Distribution

---

EXHIBIT 1
SYNOPSIS:
On 09-15-08, owner of Kelii’s Kayak Tours warned for conducting commercial activities at Olowalu. Records. Request copy be forwarded to Land Division.

ASSIGNMENT:
Follow-up with owner of Kelii’s Kayak Tours.

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

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

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

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

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

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

DISPOSITION:
Warning issued. Request Copy of Report be forwarded to Land Division.
1. Obtain the following information (minimum) from initial call:

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

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

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

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

On 10/16/08 at 8:20 a.m., I contacted Mr. Brian Yesland (owner of Kelii's Kayaks) and informed him that I was wrong by providing him the direction to utilize one kayak for instruction purposes on the shoreline (unencumbered land). I then advised him that absolutely no commercial business use of public lands were allowed except for transit purposes, unless authorized by the issuance of a permit.
or proper disposition. Mr. Yesland acknowledged that he understood my directions to him, but reminded me that he disagreed with this rule and that he did not intend to stop his kayak operation. He also informed me that he does possess a permit from Maui County to conduct his kayak operation from Ukumeame Beach Park, which is several miles south of the subject location. I informed him that he would be receiving a Cease & Desist notice advising him to stop utilizing public lands for his commercial business operation.

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

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

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

3. If area identified is:

   Private property

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

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

   State lands under DLNR:

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

Note: Mr. Yesland related that he never received the first Cease & Desist notice dated September 26, 2008. The Maui District Land Office also has not received the confirmation returned receipt for this letter.
2) If lands are under jurisdiction of non-Land Division (e.g., DOFAW, State Parks, etc.), notify applicable DLNR agency, give location information and caller information.

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

State lands under EO or owned by another government agency:

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

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

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

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

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

Approved by: ___________________  Date: ___________________

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

Refer to the attached photo report.

CC: Laura Thielen, Chairperson
Morris Atta, Land Div. Administrator
OCCL
County of Maui, Parks & Recreation, Attn: Lisa Almeida
District File
Photos of vehicles being utilized to transport equipment to the subject area.

Prohibited Business Operations. TMK (2) 4-8-003.001
Aloha Aina in Hawaiian means a love for nature, earth and of course the Islands. Keli'i's Kayak Tours is one of Maui's most experienced and trusted names. We guide our tours as Hawaiians, with that same love and respect for the ocean. For more than 10 years Keli'i's Kayak Tours has been providing travelers from around the world the very best kayak and snorkeling tours on Maui.

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

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

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

Download Brochure

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

Copyright (c) 2002 Keli'i's Kayak Tours. All Rights Reserved.
Why a guided tour?

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

Our tours include:

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

South Shore Turtle Adventure - West Shore Intro - North Shore Explorer
Waterfall Hike & Coral Garden Paddle - Maui Sunset - Paddle Snorkel & Learn to Surf

Slide Show  Tour Locations

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

One of our most popular tours remains one of our best. Your guide will lead you on a leisurely paddle through Makena Bay along it’s beautiful coastline with views of Molokini and Haleakala Volcano. You will have ample opportunities for snorkeling over colorful reefs and in Turtle Town with Hawaii’s endangered green sea turtles and a variety of colorful marine life. Don’t be surprised if you spot dolphins or during the season, possibly encounter humpback whales. This is a great paddling
adventure for ages 5 & up and all abilities, exciting marine life and tons of fun!

2 ½ Hour Tour - $69
Departure: 7:30 and 11:00 am daily from Makena Landing (check-in 15 minutes prior)
Tour Length: 2.5 Hours
Paddling Distance: 2.5 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: snack and beverages
Skill Level: All

4 ½ Hour Tour - $99
Departure: 7:30 am daily from Makena Landing (check-in 15 minutes prior)
Tour Length: 4.5 Hours
Paddling Distance: 3.5 Miles (approximate)
Snorkel Time: approximately 80 minutes (2 reefs)
Includes: Beach Lunch, snack & beverages while on water
Skill Level: All

Maui West Shore

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

2 ½ Hour Tour - $69
Departure: 7:30 am and 11:00 am daily from Olowalu (check-in 15 minutes prior)
Tour Length: 2.5 Hours
Paddling Distance: 2.5 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: snack and beverages
Skill Level: All

4 ½ Hour Tour - $99
Departure: 7:30 am daily from Olowalu (check-in 15 minutes prior)
Tour Length: 4.5 Hours
Paddling Distance: 3.5 Miles (approximate)
Snorkel Time: approximately 80 minutes (2 reefs)
Includes: Beach Lunch, snack & beverages while on water
Skill Level: All

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

Leave from beautiful D.T. Flemming beach park and paddle along Maui's northwestern rugged shorelines few people have the opportunity to experience. A spectacular coastal viewing and snorkeling tour. Honolua Bay, a marine reserve area, offers breathtaking topside and underwater scenery, tons of fish, turtles, coral and great visibility. As an added bonus this tour offers a good chance for dolphin sightings. Because of prevailing winds and wave conditions. This tour operates only May 1 - Sept 30 and is limited to ages 10 and up.
3 Hour Tour - $79
Departure: 7:30 am daily from D.T. Flemming Beach Park
Tour Length: 3 Hours
Paddling Distance: 3 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: Snack & beverages while on water
Skill Level: All

Maui Sunset Tour

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

1.5 Hour Tour - $64
Departure: Between 4:00 and 5:30 PM depending on season. Call for exact departure time and location.
Tour Length: 2 Hours
Paddling Distance: 1.5 Miles (approximate)
Includes: snack and beverages
Skill Level: All

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

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

6 ½ Hours - $139
Departure: Check in 7:15 AM, Makena Landing
Tour Length: 6.5 Hours
Distance: 2 miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: refreshments and snacks on the water and full lunch before surfing. Surf lesson includes surfboard, water booties and rash-guard.
Skill Level: ALL (8 years and up)

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

http://www.keliiskayak.com/trips.htm

3/11/2013
HIKE MAUI and KELII'S KAYAK have teamed up to offer a day tour that gives you an incredible land and sea experience. Your adventure starts with a morning kayak tour along Maui's majestic West Shore known for its calm, clear waters and magnificent reefs. We stop to snorkel at some of our favorite spots in the Olowalu Marine Sanctuary where you will view a variety of marine life including Hawaiian Green Sea turtles. After enjoying Maui's ocean beauty, your hike guide will transport you to Maui's lush east side for an easy hike to two waterfalls and pools where there is plenty of time to swim, jump from safe rock ledges. Learn about flora and fauna from your knowledgeable guide. Fun, easy and safe. Great for families. This is a true magical Maui experience. (Includes lunch)

Want more info on the Hike? Check out the slide show

---

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

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

**Tour Length:** 7 Hours

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

**Snorkel Time:** approximately 45 minutes

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

**Skill Level:** All

---

**Terms and Conditions**

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

No Commercial Activities.
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 9, 2013

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

PSF No.: 13MD-051
MAUI

Request that the Board Grant Petition for Contested Case Hearing by Island Adventure Tours, LLC, dba Keli'i's Kayak Tours for a Contested Case Hearing as to Enforcement Action Against Island Adventure Tours, LLC, dba Keli'i's Kayak Tours Involving Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, Tax Map Key: (2) 4-8-003:001 and for Authorization to Select and Appoint a Hearing Officer.

At the Board of Land and Natural Resource's meeting of June 28, 2013, the Board approved staff's recommendation as follows:

1) Find that Island Adventure Tours, LLC, dba Keli'i's Kayak Tours, violated the provisions of Chapter 171-6, Hawaii Revised Statutes, and Hawaii Administrative Rules 13-221-35, Commercial Activities, by conducting unauthorized commercial activities on unencumbered State land.

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

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

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

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

1) Grant the petitions and authorize a contested case as to the finding against Island Adventure Tours, LLC, dba Kelii's Kayak Tours.

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

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

Respectfully submitted,

[Signature]
Ian Hirokawa
Project Development Specialist

APPROVED FOR SUBMITTAL:

[Signature]
William J. Aila, Jr., Chairperson

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

Approved as amended. The Board amended paragraph 1 of the recommendations section to read: "Grant the petition, as amended, and authorize a contested case as to the finding against Island Adventure Tours, LLC, dba Kelii's Kayak Tours."
Photos taken: 10/18/2013

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

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

Photo of Mr. Burbey staking kayaks next to his trailer after he observed Maui District Land Office staff.
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 10, 2014

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

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

Rescind the Following Prior Board Actions of:

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

August 9, 2013, Item D-11, Approved as Amended, “Request that the Board Grant Petition for Contested Case Hearing by Island Adventure Tours, LLC, dba Kelii’s Kayak Tours for a Contested Case Hearing as to Enforcement Action Against Island Adventure Tours, LLC, dba Kelii’s Kayak Tours Involving Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, Tax Map Key: (2) 4-8-003:001 and for Authorization to Select and Appoint a Hearing Officer”; and

Withdrawal of Item D-7, approved on August 23, 2013, Request that the Board Grant Petition for Contested Case Hearing by KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, for a Contested Case Hearing as to Enforcement Action Against KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures Involving Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, Tax Map Key: (2) 4-8-003:001 and for Authorization to Select and Appoint a Hearing Officer.

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

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

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

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

1) Rescind the finding of the violation against Petitioner Kelii’s Kayak Tours, approved as amended under Item D-9 on June 28, 2013;

2) Rescind the grant of the petition for contested case hearing filed by Petitioner Kelii’s Kayak Tours, approved as amended under Item D-11 on August 9, 2013; and

3) Approve the requested withdrawal of the petition for contested case hearing filed by Petitioner KRS Investments and approved under Item D-7 on August 23, 2013.

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

RECOMMENDATION: That the Board:

1) Rescind the prior Board actions approved as amended on June 28, 2013 under Item D-9, and August 9, 2013 under item D-11, as described above; and

2) Approve the requested withdrawal by Petitioner KRS Investments of the petition of contested case hearing approved on August 23, 2013, under Item D-7.
Rescind Prior Board Actions
Unauthorized Commercial Activity, Oahu, Maui

Respectfully submitted,

Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

William J. Aila, Jr.
Chairperson

January 10, 2014
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Land Division
Honolulu, Hawaii 96813

August 9, 2013

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

PSF No.: 13MD-051

MAUI

Request that the Board Grant Petition for Contested Case Hearing by Island Adventure Tours, LLC, dba Kelii’s Kayak Tours for a Contested Case Hearing as to Enforcement Action Against Island Adventure Tours, LLC, dba Kelii’s Kayak Tours Involving Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, Tax Map Key: (2) 4-8-003:001 and for Authorization to Select and Appoint a Hearing Officer.

At the Board of Land and Natural Resource’s meeting of June 28, 2013, the Board approved staff’s recommendation as follows:

1) Find that Island Adventure Tours, LLC, dba Kelii’s Kayak Tours, violated the provisions of Chapter 171-6, Hawaii Revised Statutes, and Hawaii Administrative Rules 13-221-35, Commercial Activities, by conducting unauthorized commercial activities on unencumbered State land.

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

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

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

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

EXHIBIT "A"
RECOMMENDATION: That the Board:

1) Grant the petitions and authorize a contested case as to the finding against Island Adventure Tours, LLC, dba Kelii’s Kayak Tours.

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

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

Respectfully submitted,

[Signature]
Ian Hirokawa
Project Development Specialist

APPROVED FOR SUBMITTAL:

[Signature]
William J. Aila, Jr., Chairperson

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

Approved as amended. The Board amended paragraph 1 of the recommendations section to read: "Grant the petition, as amended, and authorize a contested case as to the finding against Island Adventure Tours, LLC, dba Kelii's Kayak Tours."
Impose a $1,000.00 Fine and $420.00 in Administrative Costs Against Island Adventure Tours, LLC, dba Keli'i's Kayak Tours, for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, at TMK: (2) 4-8-003:001.

PURPOSE:

Imposition of fine and administrative costs for the unauthorized commercial use of unencumbered lands by Island Adventure Tours, LLC, dba Keli'i’s Kayak Tours.

LEGAL REFERENCE:

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

LOCATION:

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

CURRENT USE STATUS:

State Beach Reserve, currently vacant and unencumbered.

RESPONSIBLE:

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

EXHIBIT "A"
VIOLATION:

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

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

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

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

Maui DOCARE report number MA-09-389
Officer Brooks Tamaye
Date: 9/15/2008
Contact made and warning issued to owner Brian Yesland and employee Jeremiah Redins on 9/15/2008.
Report attached as Exhibit #1

By: Land Agent Larry Pacheco
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>
</tr>
</thead>
<tbody>
<tr>
<td>County of Maui Dept of Parks &amp; Rec</td>
<td>No objections</td>
</tr>
<tr>
<td>County of Maui Planning (Zoning)</td>
<td>No objections</td>
</tr>
<tr>
<td>DLNR Maui DOCARE</td>
<td>No comments</td>
</tr>
<tr>
<td>DLNR Maui DOBOR</td>
<td>No objections</td>
</tr>
</tbody>
</table>

REMARKS:

Staff believes the assessment of a fine is warranted given Island Adventure Tours, LLC, dba Kelii’s Kayak Tours’ history of violations. The fine will serve as a deterrent to any future unauthorized activity.

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

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

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

EXHIBITS:

Exhibit #1 - Maui DOCARE report # MA-09-389, submitted by Officer Brooks Tamaye. (Warning Issued to Owner / Manager Brian Yesland)

Exhibit #2 - Land Division Complaint dated 10/15/2008, submitted by Land Agent Larry Pacheco.

Exhibit #3 - Business advertisements which were retrieved from the internet for Kelii’s Kayak Tours. Advertisements indicate that Island Adventure Tours, LLC, dba Kelii’s Kayak Tours continue to operate their commercial business operations from multiple locations (public lands) without authorization.

Exhibit #4 - Photo of the posted Olowalu Beach Reserve sign and prohibited activities sign where the commercial activities are being conducted.

RECOMMENDATION: That the Board:

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

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

Respectfully Submitted,

[Signature]

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

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

**STATE OF HAWAII**

**DEPARTMENT OF LAND DIVISION**

**INVESTIGATION REPORT**

**LOCATION OF OFFENSE AND CLOSEST INTERSECTING STREET:** 0-4 NE WEST OF MP 14 / ACROSS ALOHA SHORELINE

**OCCUPATION:** CHEF III

**DATE/TIME OCCURRED:** 09-15-08 3:30PM

**DATE/TIME REPORTED:** 09-15-08 3:30PM

**HOW REPORTED:** ON BEAT

---

### VEHICLE INVOLVED

<table>
<thead>
<tr>
<th>Code</th>
<th>Make</th>
<th>Model</th>
<th>Color</th>
<th>License No.</th>
<th>LD Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>0001</td>
<td>ISUZU</td>
<td></td>
<td>Gray</td>
<td>MMT-123</td>
<td></td>
</tr>
</tbody>
</table>

### BOAT INVOLVED

<table>
<thead>
<tr>
<th>Code</th>
<th>Length</th>
<th>Make</th>
<th>Model</th>
<th>Color</th>
<th>Name</th>
<th>DA No.</th>
<th>LD Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### REGISTERED OWNER

<table>
<thead>
<tr>
<th>Code</th>
<th>W = Witness</th>
<th>S = Suspect</th>
<th>R = Reporting Person</th>
<th>O = Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>0001</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

### PERSON INVOLVED

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Sex</th>
<th>Hair Color</th>
<th>Address</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>REDINS, Jeremiah</td>
<td>37</td>
<td>M</td>
<td></td>
<td></td>
<td>874-7292</td>
</tr>
<tr>
<td>YESLAND, Brian</td>
<td></td>
<td>O</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**INVESTIGATION:**

1. Interviewed the owner of the vehicle involved. 2. Interviewed witnesses to the incident. 3. Interviewed the owner of the kayak used in the incident.

**Synopsis:** On 09-15-08, REDINS observed conducting commercial kayak tour. REDINS stated he worked for Keli'i's Kayak Tours owned by Brian YESLAND. Warnings issued for violation.

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

**OFFICER OBSERVATIONS:** Upon closer inspection, I observed 2 persons and 4 kayaks on the beach. Person later identified as Jeremiah REDINS was observed operating the boat. I further observed that the boat was loaded with a motor from which there appeared clipped to it liability waiver forms. The owner of the kayak was also a small booklet appearing to contain photos.

**CONTACT WITH SUSPECT:** At approximately 0840 hrs., REDINS assisted the 6 persons into kayaks and launched them from the beach. I then contacted him and identified myself as a Conservation Enforcement Officer. I informed REDINS that he was in violation of conducting commercial activities on the beach as it was State unincumbered lands.

**SUSPECT STATEMENTS:** REDINS stated that he works for Keli'i's Kayak Tours and was just doing what he was told. When asked, REDINS stated that they charge about $45.00 per person. He further informed me that the owner of the company was Brian YESLAND.

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

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

ASSIGNMENT:
Follow-up with owner of Kelii’s Kayak Tours.

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

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

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

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

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

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

DISPOSITION:
Warning issued. Request Copy of Report be forwarded to Land Division.
1. Obtain the following information (minimum) from initial call:

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

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

Address/Location: Olowalu Lahaina, Maui
Tax Map Key 24 8-003:001

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

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

On 10/16/08 at 8:20 a.m., I contacted Mr. Brian Yesland (owner of Kelii’s Kayaks) and informed him that I was wrong by providing him the direction to utilize one kayak for instruction purposes on the shoreline (unencumbered land). I then advised him that absolutely no commercial business use of public lands were allowed except for transit purposes, unless authorized by the issuance of a permit.
or proper disposition. Mr. Yesland acknowledged that he understood my directions to him but reminded me that he disagreed with this rule and that he did not intend to stop his kayak operation. He also informed me that he does possess a permit from Maui County to conduct his kayak operation from Ukumehame Beach Park, which is several miles south of the subject location. I informed him that he would be receiving a Cease & Desist notice advising him to stop utilizing public lands for his commercial business operation.

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

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

2. Conduct Internal Review.

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

   The subject area has been identified as State Unencumbered Lands situated within a Conservation District.

3. If area identified is:

   Private property

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

   Date called: __________________________   LD Staff name: __________________________
   Spoke to: ______________________________

   State lands under DLNR:

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

   **Note:** Mr. Yesland related that he never received the first Cease & Desist notice dated September 26, 2008. The Maui District Land Office also has not received the confirmation returned receipt for this letter.
7) If lands are under jurisdiction of non Land Division (e.g., DOFAW, State Parks, etc.), notify applicable DLNR agency, give location information and caller information.

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

State lands under EO or owned by another government agency:

1) Notify applicable State agency, give location information and caller information

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

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

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

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

Approved by: __________________ Date: __________________

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

Refer to the attached photo report.

CC: Laura Thielen, Chairperson
Morris Atta, Land Div. Administrator
OCCL
County of Maui, Parks & Recreation, Attn: Lisa Almeida
District File
Aloha Aina in Hawaiian means a love for nature, earth and of course the Islands. Kelii's Kayak Tours is one of Maui's most experienced and trusted names. We guide our tours as Hawaiians, with that same love and respect for the ocean. For more than 10 years Kelii's Kayak Tours has been providing travelers from around the world the very best kayak and snorkeling tours on Maui.

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

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

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

Download Brochure

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

Copyright (c) 2002 Kelii's Kayak Tours. All Rights Reserved.
Why a guided tour?

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

Our tours include:

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

South Shore Turtle Adventure - West Shore Intro - North Shore Explorer
Waterfall Hike & Coral Garden Paddle - Maui Sunset - Paddle Snorkel & Learn to Surf

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

One of our most popular tours remains one of our best. Your guide will lead you on a leisurely paddle through Makena Bay along its beautiful coastline with views of Molokini and Haleakala Volcano. You will have ample opportunities for snorkeling over colorful reefs and in Turtle Town with Hawaii's endangered green sea turtles and a variety of colorful marine life. Don't be surprised if you spot dolphins or during the season, possibly encounter humpback whales. This is a great paddling
adventure for ages 5 & up and all abilities, exciting marine life and tons of fun!

**2 1/2 Hour Tour - $69**
Departure: 7:30 am and 11:00 am daily from Makena Landing (check-in 15 minutes prior)
Tour Length: 2.5 Hours
Paddling Distance: 2.5 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: snack and beverages
Skill Level: All

**4 1/2 Hour Tour - $99**
Departure: 7:30 am daily from Makena Landing (check-in 15 minutes prior)
Tour Length: 4.5 Hours
Paddling Distance: 3.5 Miles (approximate)
Snorkel Time: approximately 80 minutes (2 reefs)
Includes: Beach Lunch, snack & beverages while on water
Skill Level: All

**Maui West Shore**

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

**2 1/2 Hour Tour - $69**
Departure: 7:30 am and 11:00 am daily from Olowalu (check-in 15 minutes prior)
Tour Length: 2.5 Hours
Paddling Distance: 2.5 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: snack and beverages
Skill Level: All

**4 1/2 Hour Tour - $99**
Departure: 7:30 am daily from Olowalu (check-in 15 minutes prior)
Tour Length: 4.5 Hours
Paddling Distance: 3.5 Miles (approximate)
Snorkel Time: approximately 80 minutes (2 reefs)
Includes: Beach Lunch, snack & beverages while on water
Skill Level: All

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

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

http://www.keliiskayak.com/trips.htm
3 Hour Tour - $79
Departure: 7:30 am daily from D.T. Fleming Beach Park
Tour Length: 3 Hours
Paddling Distance: 3 Miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: Snack & beverages while on water
Skill Level: All

Maui Sunset Tour

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

1.5 Hour Tour - $64
Departure: Between 4:00 and 5:30 PM depending on season. Call for exact departure time and location.
Tour Length: 2 Hours
Paddling Distance: 1.5 Miles (approximate)
Includes: snack and beverages
Skill Level: All

Paddle, Snorkel & Learn to Surf

Do it all in a day!

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

6 1/2 Hours - $139
Departure: Check in 7:15 AM, Makena Landing
Tour Length: 6.5 Hours
Distances: 2 miles (approximate)
Snorkel Time: approximately 45 minutes
Includes: refreshments and snacks on the water and full lunch before surfing. Surf lesson includes surfboard, water booties and rash-guard.
Skill Level: ALL (8 years and up)

Waterfall Hike & Coral Garden Paddle

Do it all in a day!

http://www.kelhiskayak.com/trips.htm

3/11/2013
HIKE MAUI and KELLI'S KAYAK have teamed up to offer a day tour that gives you an incredible land and sea experience. Your adventure starts with a morning kayak tour along Maui's majestic West Shore known for its calm, clear waters and magnificent reefs. We stop to snorkel at some of our favorite spots in the Olowalu Marine Sanctuary where you will view a variety of marine life including Hawaiian Green Sea turtles. After enjoying Maui's ocean beauty, your hike guide will transport you to Maui's lush east side for an easy hike to two waterfalls and pools where there is plenty of time to swim, jump from safe rock ledges. Learn about flora and fauna from your knowledgeable guide. Fun, easy and safe. Great for families. This is a true magical Maui experience. (Includes lunch)

Want more info on the Hike? Check out the slide show

7 Hours - $160 This tour requires a minimum of 4 to confirm departure.
Departure: 7:30 am (Daily) from Olowalu (check-in 15 minutes prior)
Tour Length: 7 Hours
Distance: 2 mile paddle plus 1 mile hike (approximate)
Snorkel Time: approximately 45 minutes
Includes: refreshments and snacks on the water and full lunch during hike
Skill Level: All

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

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

Olowalu Beach Reserve signs listing prohibited activities which include

No Commercial Activities.
**STATE OF HAWAII**
**BOARD OF LAND AND NATURAL RESOURCES**

**PETITION FOR A CONTESTED CASE HEARING**

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Action Date / Item No.</td>
<td>Division/Office</td>
</tr>
</tbody>
</table>

**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 §12-1-30, 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.)*

<table>
<thead>
<tr>
<th>1. Name</th>
<th>Island Adventure Tours, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Contact Person</td>
<td>Brian Yesland</td>
</tr>
<tr>
<td>3. Address</td>
<td>Mailing:</td>
</tr>
<tr>
<td>4. City Kihei</td>
<td>5. State and ZIP</td>
</tr>
<tr>
<td>6. Email</td>
<td>HI 96753</td>
</tr>
<tr>
<td>7. Phone</td>
<td>8. Fax</td>
</tr>
<tr>
<td>808-879-3957</td>
<td></td>
</tr>
</tbody>
</table>

---

**B. ATTORNEY (If represented)**

<table>
<thead>
<tr>
<th>9. Attorney</th>
<th>Thomas R Cole</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Firm Name</td>
<td>Thomas R Cole Attorney at law</td>
</tr>
<tr>
<td>11. Address</td>
<td>12. City</td>
</tr>
<tr>
<td>Wailuku, Maui</td>
<td>HI 96793</td>
</tr>
<tr>
<td>14. Email</td>
<td>15. Phone</td>
</tr>
<tr>
<td></td>
<td>16. Fax</td>
</tr>
<tr>
<td></td>
<td>808-244-5460</td>
</tr>
</tbody>
</table>

FORM APO-11  Page 1 of 2  EXHIBIT "B"
<table>
<thead>
<tr>
<th><strong>G. SUBJECT MATTER</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>17. <strong>Board Action Being Contested</strong></td>
</tr>
<tr>
<td>18. <strong>Board Action Date</strong></td>
</tr>
<tr>
<td>19. <strong>Item No.</strong></td>
</tr>
<tr>
<td>20. <strong>Nature and Extent of Petitioner’s Interest That May Be Affected by the Board Action</strong></td>
</tr>
<tr>
<td>21. <strong>Any Disagreement Petitioner May Have with an Application before the Board</strong></td>
</tr>
<tr>
<td>22. <strong>Any Relief Petitioner Seeks or Deems Itself Entitled to</strong></td>
</tr>
<tr>
<td>23. <strong>How Petitioner’s Participation in the Proceeding Would Serve the Public Interest</strong></td>
</tr>
<tr>
<td>24. <strong>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</strong></td>
</tr>
</tbody>
</table>

☐ 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.

<table>
<thead>
<tr>
<th>Petitioner or Representative (Print Name)</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas R. Cole</td>
<td></td>
<td>7-5-23-13</td>
</tr>
</tbody>
</table>

**FORM APO-11**

Page 2 of 2
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 Kcy: (2) 4-8-003:001 and for Authorization to Select and Appoint a Hearing Officer.  

At the Board of Land and Natural Resources'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 in order 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 Kayaks & Outfitters, and Tiki Team Adventures, shall be fined $1,000 for each day or part thereof that such activities occur.  

A copy of the submittal is attached as Exhibit A. Petitioner orally requested a contested case hearing before the close of the meeting on July 12, 2013. On July 22, 2013, the Department received three petitions for contested cases from attorney Thomas Cole, on behalf of KRS Investments LLC, South Pacific Kayaks and Outfitters and Tiki Team Adventures, pursuant to Hawaii Administrative Rules 13-1-29 and 13-1-31.1. Copies of the petitions are attached as Exhibit B, C and D respectively. After  

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
at its meeting held on  
August 23, 2013  

EXHIBIT "B"
consultation with the Department of Attorney General, the Department is recommending that the petitions be granted. Given that all three petitioners are, for all intents and purposes, a single entity, staff recommends that all three petitions be consolidated into a single contested case hearing.

RECOMMENDATION: That the Board:

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

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

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

Respectfully submitted,

Ian Hirokawa
Project Development Specialist

APPROVED FOR SUBMITTAL:

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

July 12, 2013

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

RESUBMITTAL: Impose a $1,000.00 Fine and $420.00 in Administrative Cost Against KRS Investments LLC, d/b/a 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, d/b/a 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"
BLNR - Issuance of Fine  
For Unauthorized Commercial Activities        July 12, 2013

Address:                                        
Kihei, HI 96753

VIOLATION:

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

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

Maui DOCARE report number MA-12-060
Officer Joshua 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>
</tr>
</thead>
<tbody>
<tr>
<td>County of Maui – Dept. of Parks &amp; Rec.</td>
<td>No objections</td>
</tr>
<tr>
<td>County of Maui – Planning (Zoning)</td>
<td>No objections</td>
</tr>
<tr>
<td></td>
<td>No comments</td>
</tr>
<tr>
<td>DLNR – Maui DOCARE</td>
<td>No response</td>
</tr>
<tr>
<td>DLNR – Maui DOBOR</td>
<td>No objections</td>
</tr>
<tr>
<td></td>
<td>No comments</td>
</tr>
</tbody>
</table>

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 Ornellas, District Land Agent

APPROVED FOR SUBMITTAL:

[Signature]
William J. Alla Jr., Chairperson
Olowalu Beach Reserve signs listing prohibited activities which include

No Commercial Activities.
CONFIDENTIAL

STATE OF HAWAII
INVESTIGATION REPORT

REPORT NUMBER
MA-12-680

DATE
11 AUG -41 M 8 35

INVESTIGATOR
REZENTES, Joshua

LOCATION OF OFFENSE AND NEAREST INTERSECTING STREET
CLOWALU BEACH RESERVE

RECORDING LOCATION OF OFFENSE OR TYPE OF PREMISES
CLOWALU BEACH RESERVE

VEHICLE INVOLVED

NAME
VICTORIA KALUNA-PALAFAX

AGE
31

SEX
F

RACE
MAI

DATE OF OCCURRENCE
7/17/71

TIME OF OCCURRENCE
0730 HOURS

DUTY
MAYOR

OCCUPATION
CREW III

DRIVING LICENSE
SAME

PHONE NUMBER
873-3950

VEHICLE MANUFACTURER

VEHICLE MODEL

VEHICLE COLOR

VEHICLE LICENSE NUMBER

VEHICLE DESCRIPTION

CODE:  W = Witness  S = Suspect  F = Filed  R = Reporting Person  O = Other

ON THE ABOVE MENTIONED DATE AND TIME I WAS ASSIGNED BY OFFICER R. DECAMBR A TO INVESTIGATE A LAND MANAGEMENT CASE AT CLOWALU BEACH RESERVE. CONTACT WAS MADE WITH REPORTING PERSON VICTORIA KALUNA-PALAFAX VIA PHONE WHO RELATED THAT SHE HAD OBSERVED NUMEROS 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 ON THEIR VEHICLES. TWO TRUCKS WERE MARKED WITH "SOUTHERN PACIFIC KAYAKS" WHILE TWO OTHER VEHICLES HAD TRAILERS ATTACHED BUT NO COMPANY LABEL. ON 7/20/11 I CONDUCTED A FOLLOW UP CHECK WHERE I MADE CONTACT WITH PETER HAMILTON WHO WAS A KAYAK TOUR GUIDE FOR "SOUTHERN 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 "SOUTHERN PACIFIC KAYAKS" WERE OBSERVED WHEN THE VIOLATION WAS OCCURRING. I FURTHER EXPLAINED TO HIM THAT IT WAS AGAINST THE LAW FOR ANY COMPANY TO LEAVE KAYAKS ON THE BEACH. HAMILTON RELATED THAT HE UNDERSTOOD THE VIOLATION AND THAT HE WOULD APPRIZE 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. DECAMBR A TO INVESTIGATE A LAND MANAGEMENT CASE AT CLOWALU BEACH RESERVE.

CHECKS CONDUCTED:

AT APPROXIMATELY 0830 HOURS I CONDUCTED CHECKS AT THE MENTIONED LOCATION WHERE I DID NOT OBSERVE ANY KAYAK ON THE BEACH OR ANY KAYAK TOUR GUIDES, ONLY THEIR VEHICLES. TWO TRUCKS WERE MARKED WITH "SOUTHERN PACIFIC KAYAKS" WHILE TWO OTHER VEHICLES HAD TRAILERS ATTACHED BUT NO COMPANY LABEL. CHECKS WITH HAWAII POLICE DISPATCH REVEALED THAT THE VEHICLES BELONGED TO PAUL NELSON WITH ADDRESSES OF LABANEE 94067 (511-T88) AND DARYL ONALE "KAILA 94070 (734-4408)." I WAITED FOR APPROXIMATELY ONE HOUR FOR THE KAYAK TOURS TO RETURN HOWEVER, THEY DID NOT.
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 LABLED 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.

Officer Joshua REZENTES, #174
State of Hawaii/DLNR/DOCARE MAUI
7/27/11 @ 1105 Hours
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, AHIIH 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 in 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 Ahin Kinau marine reserve just around the corner. Always a great kayaking trip and one the most consistently calm areas. Join us in Makena for a memorable experience and see the turtles.

**Kihei Makena Cruise**
Starting in Kihei at Kalama Park and ending at Makena Landing, we travel along the coastline where we will see surfers, boats, and some really nice beach houses (you know... the ones we can’t afford!), and the five star resorts. A really cool way to explore the South Maui coast and you won’t be doubling back seeing things twice. With many snorkeling opportunities, and places to stop for lunch, this kayaking expedition is one of a kind. This one way trip includes lunch.
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>Name</th>
<th>Contact Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>KRS Investments, LLC</td>
<td>Roger Simonot</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City</th>
<th>State and ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Kailua</td>
<td>HI 96734</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Email</th>
<th>Phone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>808-270-2699</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Attorney Name</th>
<th>Firm Name</th>
<th>Firm Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas R Cole</td>
<td>Thomas R. Cole</td>
<td>Attorney at law</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City</th>
<th>State and ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Wailuku</td>
<td>HI 96793</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Email</th>
<th>Phone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(808) 244-5460</td>
</tr>
</tbody>
</table>

FORM APO-11  Page 1 of 2
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, IIAR**
   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.

\[\text{Petitioner or Representative (Print Name): }\]

\[\text{Signature: }\]

\[\text{Date: } 1-19-2013\]

**FORM APO-11**

Page 2 of 2
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>NAME</th>
<th>CONTACT PERSON</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Pacific Kayaks &amp; Outfitters</td>
<td>Roger Simonot</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>CITY</th>
<th>STATE AND ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kihei</td>
<td></td>
<td>HI 96753</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMAIL</th>
<th>PHONE</th>
<th>FAX</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>808-270-2689</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ATTORNEY NAME</th>
<th>FIRM NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas R Cole</td>
<td>Thomas R. Cole Attorney at law</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>CITY</th>
<th>STATE AND ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wailuku</td>
<td></td>
<td>HI 96793</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMAIL</th>
<th>PHONE</th>
<th>FAX</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(808) 244-3460</td>
<td></td>
</tr>
</tbody>
</table>
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 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.

Petitioner or Representative (Print Name) [Signature] Date

FORM APD-11 Page 2 of 2
### 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](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>Case No.</th>
<th>Date Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Action Date / Item No.</td>
<td>Division/Office</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name</th>
<th>Contact Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ti'li'i Team Adventures</td>
<td>Roger Simonot</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City</th>
<th>State and ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Kihel</td>
<td>HI 96753</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Email</th>
<th>Phone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>808-270-2899</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Attorney Name</th>
<th>Firm Name</th>
<th>Attorney at law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas R Cole</td>
<td>Thomas R. Cole</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City</th>
<th>State and ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Waikoloa</td>
<td>HI 96793</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Email</th>
<th>Phone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(808) 244-5460</td>
<td></td>
</tr>
</tbody>
</table>
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.

[Signatures]
Petitioner or Representative (Print Name)  
Signature  
Date  

FORM APO-11  
Page 2 of 2
November 18, 2013

Via US Mail

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

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

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

Dear Person:

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

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

Very Truly Yours,

THOMAS R. COLE
Attorney at Law

TRC/mll

Cc: Dan Morris
    Russell Tsuji
    Roger Siminot

Withdrawal of Petition Approved By:

Roger Siminot

EXHIBIT "C"