STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

January 26, 2018

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

Land Board Members:

SUBJECT: REQUEST FOR ISSUANCE OF AN ADMINISTRATIVE FINE OF $2,500 PURSUANT TO CHAPTER 183, HAWAII REVISED STATUTES, TO FENG YI GUO FOR VIOLATIONS OF SECTION 13-104-24, HAWAII ADMINISTRATIVE RULES, AT MAUNA KEA FOREST RESERVE, HAMAKUA, HAWAII, TMK (3) 4-4-015:001

INTRODUCTION:

This is an enforcement action for violation of section 13-104-24, Hawaii Administrative Rules (HAR), for engaging in commercial activities in a forest reserve without a written permit. Evidence exists that Ms. Feng Yi Guo, through her Hilo-based tour company, believed to be Mao Yuan Corporation,\(^1\) has been conducting commercial activity without a permit in the Mauna Kea Forest Reserve (FR), in violation of section 13-104-24, HAR. The Division requests issuance of an administrative fine for this rule violation.

BACKGROUND:

The area surrounding the Maunakea Visitor Information Station is within the Mauna Kea FR. Recently this area has become a popular spot for sunset viewing and stargazing for a number of commercial tour operators. Section 13-104-24, HAR, requires that any person conducting a commercial activity of any kind within a forest reserve obtain a permit from the Board of Land and Natural Resources or its authorized representative. The Division of Conservation and Resources Enforcement (DOCARE) and the Rangers of the Office of Maunakea Management (OMKM) have documented Ms. Feng Yi Guo conducting commercial tours within Mauna Kea FR without a permit on multiple occasions. Section 183-5, Hawaii Revised Statutes (HRS), provides that any person conducting an illegal activity within the Forest Reserve System may be subject to administrative fines, fees, and costs.

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\(^1\) Ms. Guo was operating a vehicle with PUC number registered to Mao Yuan Corporation. DCCA Business Registration Division records show “Fengyi Guo” as the agent, and “Feng Yi Guo” as the President, Treasurer, and Director. DCCA show the business is a Hawaii corporation “not in good standing” to conduct business in the State of Hawaii as of January 10, 2018. See https://hbe.ehawaii.gov/documents/business.html?fileNumber=207886D1
VIOLATION FACTS:

Investigation and Documentation History

On December 5, 2017, a Notice to Cease and Desist was served by a DOCARE Officer to Ms. Feng Yi “Grace” Guo at her place of business at Makalika Street, Hilo, HI to “immediately cease and desist all commercial activities within Mauna Kea Forest Reserve.” Ms. Guo signed and dated the Cease and Desist Notice as of the date of delivery, December 5, 2017. Prior to the issuance of the notice, OMKM Rangers documented Ms. Guo conducting commercial activities within Mauna Kea FR on 19 separate occasions within a 90-day reporting period. The notice to cease and desist also states that “[n]o person shall engage in commercial activities of any kind in a forest reserve without a written permit from the board or its authorized representative” and that “any person violating any of the provisions of these rules [HAR §13-104-24] shall be penalized with an administrative fine...”

On the next day after being served the Cease and Desist notice on Ms. Guo, December 6, 2017, OMKM Rangers documented Ms. Guo again conducting a commercial tour in the Mauna Kea FR. The commercial tour was seen heading into the forest reserve from the Mauna Kea Access Road/Summit Road across from the Maunakea Visitor Information Station and headed up via road FB 10 to Pu‘u Kalepeamoa within Mauna Kea FR. The OMKM Rangers photographed the tour vendor and vehicles in use during the tour and provided this documentation to DOCARE (Exhibit 1). Ms. Guo was again duly notified that such activities are illegal.

DISCUSSION:

The Office of Maunakea Management and DOCARE have been working cooperatively in the management, documentation, and enforcement of illegal activities being conducted within the Mauna Kea FR. The increasing popularity of the sunset viewing and stargazing in the areas surrounding the Maunakea Visitor Information Station has spurred a number of commercial tour operators to utilizing the Mauna Kea FR for their tours. Per section 13-104-24, HAR, any person conducting a commercial activity within a forest reserve must first obtain a written permit from the Board of Land and Natural Resources, or its authorized representative. To date, DLNR (via BLNR) has not issued any permits to conduct commercial tours on or in the Mauna Kea FR, nor authorized any such commercial activity.

Ms. Feng Yi Guo, through her tour company based in Hilo, Hawaii has been documented numerous times within the Mauna Kea FR conducting commercial activities without a permit, at least one of which was after receiving a Cease and Desist notice from the DLNR Division of Forestry and Wildlife (Division) through DOCARE. The Division is requesting that Ms. Guo be issued an administrative fine for this illegal use of the forest reserve.

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2 Section 13-104-3, HAR, was adopted in 1993 and erroneously refers to penalties for violations of chapter 13-104 rule provisions as a misdemeanor. Only those persons violating the timber trespass under section 183-17, HRS, can be found guilty of a criminal misdemeanor.
Applicable and recommended penalties

In 2006, the Legislature passed into law section 183-5, HRS, allowing administrative penalties for violations as follows:

[§183-5] General administrative penalties. (a) Except as otherwise provided by law, the board or its authorized representative may:

(1) Set, charge, and collect administrative fines;

(2) Bring legal action to recover administrative fines, fees, and costs, including attorney's fees and costs and costs associated with land or habitat restoration; and

(3) Collect administrative fees and costs pursuant to paragraph (2), resulting from a violation of this chapter, any rule adopted, or permit issued thereunder.

(b) The administrative fines for violation of this chapter shall be as follows:

(1) For a first violation, or any violation not preceded within a five-year period by a violation of this chapter, a fine of not more than $2,500 per violation;

(2) For a second violation within five years of a previous violation of this chapter, a fine of not more than $5,000 per violation; and

(3) For a third or subsequent violation within five years of the last violation of this chapter, a fine of not more than $10,000 per violation.

To staff’s knowledge, this appears to be Ms. Guo’s first offense against DLNR’s forest reserve administrative rules. This submittal only covers alleged violations by Ms. Guo up until the date of incident contained in the last dated enforcement report (December 6, 2017).

Aggravating and mitigating factors for fine amount

The definition of commercial activity in section 13-104-2 includes the provision of transportation to or from the forest reserve (see “LEGAL AUTHORITY” below). To date, Ms. Guo has denied conducting any commercial tours. The enforcement facts developed to date clearly document Ms. Guo arriving and leaving in vehicles with large groups of people. Ms. Guo led the groups into the forest reserve presumably for stargazing in the area of Maunakea pu‘u. Taking all incidents into consideration, the circumstantial evidence is significant (19+ occasions in which Ms. Guo was identified leading groups into the forest reserve, use of a PUC vehicle registered to a company in which Ms. Guo is the sole officer, similar warnings from OMKM on conducting unauthorized commercial tours on OMKM managed areas).
Reasons for imposing a larger fine include:
- Frequent travel and use of the forest reserve without a permit
- Denial of wrongdoing
- Continued violation conduct after being warned to cease and desist
- Charged as a continuing course of conduct for over three months rather than as separate violations

Reasons for consideration of a lesser fine amount:
- None

LEGAL AUTHORITY:

Section 13-104-24, HAR, provides that “no person shall engage in commercial activities of any kind in a forest reserve without a written permit from the board or its authorized representative.” “Commercial activity” is defined by Section 13-104-2, HAR, as “the use of or activity in the forest reserve for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Commercial activities include activities whose base of operations are outside the boundaries of the forest reserve, or provide transportation to or from the forest reserve.” (emphasis given)

Subsection 183-5(b), HRS, provides that administrative fines “for the first violation, or any violation not preceded within a five-year period by a violation of this chapter, a fine of not more than $2,500 per violation.”

Policy considerations for imposition of the recommended fine include curtailing unmanaged or unregulated, unauthorized commercial activity in the forest reserve. As such, the Division is requesting the issuance of an administrative fine equal to $2,500 as allowed under section 13-104-3, HAR and section 183-5, HRS.
RECOMMENDATIONS:

That the Board:

1. Find that Ms. Feng Yi Guo violated Hawaii Administrative Rules (HAR) section 13-104-24 as stated in the attached DOCARE report and as discussed above, for engaging in commercial activities in the forest reserve without a permit.

2. Authorize an administrative fine of $2,500 to be assessed against Ms. Feng Yi Guo pursuant to Hawaii Revised Statutes (HRS) section 183-5 for the violation of HAR section 13-104-24, for engaging in commercial activities in a forest reserve without a permit.

3. Notify Ms. Feng Yi Guo that any future violation may result in additional penalties of increasing amount as provided in section 183-5, HRS.

4. Refer this matter to the Department of the Attorney General for administrative and legal enforcement in the event that a request for a contested case is made.

Respectfully Submitted,

DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

SUZANNE D. CASE, Chairperson

Attachments:
Exhibit 1: DOCARE Report and Notice to Cease and Desist
### State of Hawaii Department of Land and Natural Resources Division of Conservation and Resources Enforcement

**Investigation #** 18-0603-HA  
**District** Hawaii  
**Lead Investigator** Shishido, Edwin  
**Report Status** In Progress  
**Key Report** [X] Yes [ ] No  
**Date/Time Reported** 12/05/2017 12:40PM  
**Location** Mauna Kea GMA and Forest  
**Classification** Forestry: Cease & Desist  
**Connecting Reports** 18-0621-HA, 17-1127-HA

#### Investigation Report

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### SYNOPSIS

On 12-05-17/1240 hrs, Tuesday, Officer SHISHIDO contacted the aforementioned suspect, Feng Yi "Grace" GUO (F) 37Y, at GUO's place of business at [redacted], Hilo, Hi. Based on the OMKM Ranger report for the last 90 days, GUO has been seen and documented 19 times in the Mauna Kea Forest Reserve area in the vicinity of Hale Pohaku, conducting commercial activity without a permit, in direct violation of HAR 13-104-24. On this day and time, Officer SHISHIDO issued GUO a notice of Cease and Desist, dated 06DEC17. GUO signed the letter acknowledging receiving the letter. A copy of the letter was given to GUO for her records. Officer SHISHIDO left the area at 1255 without incident.

ATTACHMENTS: Cease and Desist letter, OMKM Ranger Report

DISPOSITION: CLOSED. WR.
WARNINGS

Issuing Officer  Shishido, Edwin
Defendant  GUO, Feng (Suspect)

Violation  13-104-24 COMMERCIAL ACTIVITIES WITHOUT A PERMIT
Activity Code  1200 Forestry
Re: Notice to Cease and Desist Commercial Activities within the Mauna Kea Forest Reserve, Island of Hawaii

Dear Mr. Guo,

It has come to the attention of the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW) that you are conducting commercial activities on a portion of Mauna Kea Forest Reserve (TMK 3-4-4-015-001).

HAR §13-104-24 states "No person shall engage in commercial activities of any kind in a forest reserve without a written permit from the board or its authorized representative" (HAR §13-104-24).

Any person violating any of the provisions of these rules shall be penalized with an administrative fine from the Board of Land and Natural Resources (HAR §13-104-3).

You must immediately cease and desist all commercial activities within Mauna Kea Forest Reserve. DLNR and DOFAW will be monitoring activities in the area for compliance and will take further action as needed to enforce the rules and regulations of the State of Hawaii.

Please feel free to contact the Hawaii Branch Forest Management Supervisor with any questions or concerns on this matter. His contact information is provided below.
Mahalo for your cooperation,

Steven Bergfeld  
Hawaii Branch Manager  
Division of Forestry & Wildlife  

Jay Hatayama  
Forest Management Supervisor  
Div. of Forestry & Wildlife  
19 E. Kawili St.  
Hilo, HI 96720  
Office: 808-974-4221  
Email: Jay.M.Hatayama@hawaii.gov
On 12-05-17/2120 hrs, Wednesday, Officer SHISHIDO received an email from the CMKM Mauna Kea Rangers of "Grace" GUO conducting her tour at the Mauna Kea Forest Reserve. Located off of the Mauna Kea Access Road/Mauna Kea Summit Road. Further located at the Hale Pohaku Visitor Station. Tour was seen headed into the Forest Reserve across the Hale Pohaku VIS, into the Mauna Kea Forest Reserve up on Puu Kalepamoas off of FB-10 Road. CMKM Rangers photographed tour vendor and vehicles used. This activity was conducted despite GUO being issued a Cease & Desist notice the prior day, dated 12-05-17, REFER TO REPORT 18-0803-HA & 17-1127-HA. Although GUO being warned and being issued C&D letters it is apparent that GUO is ignoring the fact that a permit is required. Therefore, due to DOFAW Forestry Admin Rules being Admin penalties, Officer SHISHIDO is referring this case to DOFAW for their review and disposition.

CONNECTING CASES: 17-1127-HA & 18-0803-HA.

PHOTOGRAPHS: REFER TO PHOTO REPORT FOR VISUAL DETAILS.

ATTACHMENTS: R.O. VEHICLES ZDJ760 & ZDT643.

DISPOSITION: CASE REFERRED TO DOFAW.

SEND A COPY OF THIS CASE & CONNECTING REPORTS TO DOFAW ATTN: STEVE BERGFIELD, JAY HATAYAMA, DAVE SMITH.
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<td>Edwin Shishido</td>
<td>[ X] Yes</td>
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<td>LOCATION</td>
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<td>Forestry: Prohibited Activity</td>
<td>17-1127-HA, 18-0603-HA</td>
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**Report Description:** Unpermitted Commercial Activity

**Date/Time Taken:** 12-06-17/1740

**Taken By:** WALTJEN/Thomas OMKM Mauna Kea Ranger

**Scene:** Mauna Kea FR parking area Hale Pohaku VIS

**Equipment:** Cell phone

**Weather Conditions:** Cloudy overcast

**Lighting:**

**Focus:**

1. Depicts vehicle ZDJ760.

2. Depicts vehicle ZDJ760 PUC#5776-C MYC

3. Depicts vehicle ZDT 643.

4. Depicts vehicle ZDT643 PUC#5776-C MYC.
5 Depicts Feng Yi “Grace” GUO fronting vehicle ZDJ760.
Received Time: 07:00:12 12-10-17  
Source ORI: HILIC0000
Summary: M55L: LIC=2DJ760 TYP=1

View Message Details

M55L/1/2DJ760
PLATE: 2DJ760  STATUS: A  SPEC-PLT:  EMBLEM: H28142  EXPIR-DATE: 08 18
VIN: 1FBVU4X2FRB26110  MAKE: FORD  TYPE: BUS  YR-MODEL: 15  COLOR: Q
RO-NAME: MAO YUAN CORP  PHON-CODE: *5050  COUNTY: H
RO-ADDRESS: PO BOX 4244  RO-CITY: HILLO HI 96720
LO-NAME: SAME  SF-EXP: 08 18 TCI-NO: 2DJ760-17
LO-ADDRESS:  
1ST-SOLD: 09 21 15  DT-ISS: 08 04 17 TX-RT: P  HVUC:  BAD-CK:  SP-VEH:
OCDM-DSC: N  NET-EX: 12  TAX-COLL: 264.38  PENALTY-AMT: 0.00  FLT-ENM: 25.50
OT-PND:  
ELT KEY: 

MRI 997364 IN: RX05M55L 360 AT 10DEC2017 07:00:12
OUT: DLNR02 8 AT 10DEC2017 07:00:12
Dec 10, 2017 7:03:52 AM

Received Time: 07:03:52 12-10-17
Summary: M55L: LIC=ZDT643 TYP=1

View Message Details

DLNR02 00012 AT 07:03 12/10/2017
RX05M555L
MRI-997531

Received Time: 07:03:52 12-10-17
Summary: M55L: LIC=ZDT643 TYP=1

View Message Details

M55L/1/ZDT643
PLATE: ZDT643
STATUS: A
SPEC-FLT: EMBLEM: ZDT643 EXPIR-DATE: 05 17
VIN: 1FBVU4XG6FKA85416 MAKE: FORD TYPE: BUS YR-MODEL: 15 COLOR: G
RC-NAME: MAO YUAN CORP PHON-CODE: +5050 COUNTY: H
RO-ADDRESS: P O BOX 4244 RO-CITY: Hilo HI 96720
LO-NM: SAME
SW-EXP: 06 16 TCI-NO: ZDT643-16
LO-ADDRESS: LO-CITY:
1ST-SOLD: 06 22 15 DT-ISS: 05 26 16 TX-RT: P HVUC: TVB: BAD-CK: SP-VEH:
MO-TX: 12 TAX-COLL: 264.38 PENALTY-AMT: 0.00 FLT-EMB: 25.50 OT-PND:
ELT KEY:

MRI 997532 IN: RX05M555L 366 AT 10DEC2017 07:03:52
OUT: DLNR02 10 AT 10DEC2017 07:03:52
A. COMPLAINT

Taken By: Edwin Shishido
How Taken: Other

Complainant: Paul PAIVA

Phone: 808-969-9613 808-960-2952
Address: 1199 Kaumana Dr, Hilo, HI, 96720

Incident Summary: Description: Prohibited Commercial Activity
Suspect: Feng Yi "Grace" GUO
Vehicle/Vessel: ZCF089

Location: Mauna Kea GMA and Forest Reserve
Location Notes: Mauna Kea summit road/Mauna Kea Access Road

Occured From: 01/06/2018 05:45PM
Occured To: 01/06/2018 05:45PM

B. REPORT CONTROL

Branch: Hawaii
District: Hawaii
Lead Investigator: Edwin Shishido
Date Assigned: 01/09/2018 10:13AM

C. NOTES/DISPOSITION/OTHER INFO

CASE REFERRED TO DOFAW.
HAR 13-104-24
## Investigation Report

1. **Classification**: Forestry: Prohibited Activity
2. **Source**: Other
3. **Complainant's Name**: Paul Paiwa
4. **Sex**: Male
5. **Race**: Chinese
6. **Age**: 37
7. **Birth Date**: 03/19/1980
8. **Occupation**: Tour Operator
9. **Address**: 345 Makalikik Street, Hilo, HI, 96720
10. **Place Employed/School Attending**: -
11. **Home**: -
12. **Work**: -
13. **Cell**: 808-989-3374

### Vehicles

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### Registered Owner

- **Name**: Feng Guo
- **Address**: P.O. Box 4244, Hilo, HI, 96720
- **Home**: -
- **Work**: -
- **Cell**: 808-989-3374

### People

- **Name**: Feng Guo
- **Category**: Suspect
- **Address**: 345 Makalikik Street, Hilo, HI, 96720
- **Home**: -
- **Work**: -
- **Cell**: 808-989-3374

### Synopsis

On 01-09-18/0709, Officer SHISHIDO assigned to follow-up on unpermitted commercial tours being conducted in the Mauna Kea Forest Reserve/GMA. E-mail sent to Officer SHISHIDO identified Feng Yi "Grace" Guo as the tour operator. Guo has been contacted before on several occasions and given a cease and desist on 12-05-17. However, Guo is ignoring warnings and C&D letter. See connecting reports. This recent incident occurred on 01-06-18/1745 on the Mauna Kea Llam. OMKM Mauna Kea Ranger Kelvin ANDRADE took a photo of her vehicle, license # ZCF089, on this date. Printout of vehicle registration is attached.

**ATTACHMENTS**: E-mail of incident from Paul "Scotty" Paiva, photograph of vehicle ZCF089, R.O. of vehicle ZCF089.

**Disposition**: CASE REFERRED TO DOFAW.

**Route a Copy of This Report to Stever Bergfeld, Jay Hatayama, & (Dave Smith; Attn Irene Sprecher DOFAW).**

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**Investigator**: Shishido, Edwin

**Badge No.**: 188

**Date Written**: 01/09/2018 11:39AM

**Approved By**: Walker, James

**Date Approved**: 01/02/18

**Badge No.**: 19
Aloha Edwin - Grace on the summit 01/06/18, unknown amount of passengers.

Mahalo,
Scotty

---------- Forwarded message ----------
From: Kelvin Andrade <kelvinan@hawaii.edu>
Date: Sun, Jan 7, 2018 at 8:45 AM
Subject: 01-06-18 Daily Photos
To: OMKM Ranger Photos <omkm-ranger-photos-grp@hawaii.edu>

Aloha All,

Please find attached photos taken during today's patrols.

Photo #1 is snow play/photoshoot activity below Subaru. I contacted this group to advise against filming/photoshoot activity without proper permits.

Photo #2 is unpermitted tour operator Grace GUO parked near Hoku Kea for sunset in her Dark Brown Ford Expedition (ZCF0890) with unknown amount of passengers.

Mahalo,

Kelvin

-- Forwarded message --
Original message was received because you are subscribed to the Google Groups "OMKM Ranger Photos" group. To stop receiving email from this group, send email to omkm-ranger-photos-grp@hawaii.edu.
Received Time: 08:39:47 01-09-18
Summary: M55L: LIC=ZCF089 TYP=1

View Message Details

DNLN02 00018 AT 08:39 01/09/2018
RX05M55L
MRI-668417

Received Time: 08:39:47 01-09-18
Summary: M55L: LIC=ZCF089 TYP=1

View Message Details

M55L/1/ZCF089
PLATE: ZCF089
STATUS: A SPEC-PLT:  
EMBLEM: H08097 EXPIR-DATE: 03 18
VIN: 1FMJU2A53DE64454 MAKE: FORD TYPE: MPVH YR-MODEL: 13 COLOR: A
RO-NME: GUO FENG YI
RO-ADDR: PO BOX 4244
RO-CITY: HILO HI 96720
LO-NM: ALLEY FINANCIAL SERVICES
LO-ADDR: PO BOX 8143
LO-CITY: COCKEYSVILLE MD 21030
1ST-SOLD: 04 04 14 DT-ISS: 04 18 17 TX-RT: P HVUC: TTV: BAD-CK: SF-VEH:
NET-WT: 05710 GVW: 00000 EXMT: F ODOM: 030565 ODOM-EXC: N ODOM-DSC: N
MO-TX: 00 TAX-COLL: 0.00 PENALTY-AMT: 0.00 PLT-EMB: 0.00 OT-PND:
PRI-PT: XRF-PT: 
VO: N MO: N DUP-DT: LS-UDT: 04 18 17
ELT KEY:

MRT 668418 IN: RX05M55L 370 AT 09JAN2018 08:39:47
OUT: DNLN02 13 AT 09JAN2018 08:39:47