

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

August 24, 2018

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

Maui

Approval of Appointment and Selection of a Hearing Officer for Petition of Contested Case Hearing Regarding April 27, 2018 Agenda Item D-3 "Administrative Enforcement Action for Violation of Hawaii Administrative Rules Chapter 13-221, Unencumbered Public Lands, Sections 13-221-11 "Animals" and 13-221-35 "Commercial Activities", Against Paige Clew DePonte and TLR LLC, One or Both of Whom Are Doing Business as Triple L Ranch and/or Triple L Ranch Maui Private Custom Horseback Tours; DOCARE Investigation Report No. 18-0259-MA; Kanaio, Maui; Tax Map Key: (2) 2-1-002:001 and seaward of same".

BACKGROUND

The petitioner requested a contested case hearing concerning the issuance of violations and imposition of consequent fines for unauthorized horseback riding on the beach and unauthorized commercial activity on state unencumbered lands. On April 27, 2018, LD brought a matter to the Board requesting that the Board approve the administrative enforcement actions against Ms. Paige Clew DePonte and Triple L Ranch (TLR) for violation of Hawaii Administrative Rules (HAR) Sections 13-221-11 "Animals", and 13-221-35 "Commercial Activities". Ms. DePonte verbally requested a contested case hearing at the aforementioned Board meeting and "no action" was taken on the violations and subsequent fines.

Ms. DePonte submitted a written request for contested case hearing via fax on May 8, 2018, attached as Exhibit A. It should be noted that the written petition was received one (1) day after the requisite ten (10) day deadline; however, the written petition is signed and dated May 7, 2018. In her formal petition, she claims that her activities do not violate the aforementioned rules because she is "only ride[ing] through state parcel to get to my parcels" because she also claims to own several parcels in the subject area that are "completely surrounded by the larger parcel owned by the State of Hawaii." Petitioner DePonte takes issue with the violations, claiming that she either did not violate the rules at issue and/or that she made efforts to obtain a formal disposition in order to allow her to conduct commercial tours on state unencumbered lands, but that the Department was unresponsive.

A contested case hearing is one where the "legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." HRS §91-1(5). A contested case is "required by law" if the statute or rule governing the activity in question mandates a hearing prior to the agency's decision-making or if mandated by due process. See Bush v. Hawaiian Homes Commission, 76 Hawai'i 128, 134-35, 870 P.2d 1272, 1278-79 (1994).

AUTHORITY FOR DESIGNATING HEARING OFFICERS

HAR §13-1-32(d) provides that the BLNR may conduct the Contested Case Hearing, or at its discretion, may appoint a hearing officer to conduct the hearing. Additionally, HRS Chapter 92-16 and Chapter 171-6 also provide that the Board may delegate to the Chairperson the authority to select the hearing officer to conduct a Contested Case Hearing.

BASIS FOR DESIGNATING HEARINGS OFFICERS

Conducting a Contested Case Hearing may involve: giving notice of the hearings, administering oaths, compelling attendance of witnesses and the production of documentary evidence, examining witnesses, certifying acts, issuing subpoenas, making rules, receiving evidence, holding conferences and hearings, fixing filing deadlines, and disposing of other matters that may arise during the orderly and just conduct of the hearing. History suggests that designating a Hearing Officer to perform these actions may provide a more expeditious resolution of the case than having the full Board conduct the hearing.

DISCUSSION

Staff notes that, by designating a Hearing Officer to conduct the hearing, the Board does not relinquish its authority to ultimately decide on the matters being contested. At the conclusion of the case, the Board would act with its own discretion at the Hearing Officer's Finding of Fact, Conclusion of Law, and Decision and Order.

RECOMMENDATION: That the Board

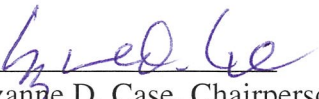
- 1) Authorize the appointment of a Hearing Officer for the above mentioned contested case, and authorize the Hearing officer conduct all of the hearings relevant to the subject petition for a contested case hearing; and
- 2) Delegate the authority for selection of the Hearing Officer to the Chairperson.

Respectfully submitted,



Malama Minn, Project Development Specialist

Approved for submittal:



Suzanne D. Case, Chairperson

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STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

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

INSTRUCTIONS:

1. File (deliver, mail 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://dlnr.hawaii.gov/forms/contested-case-form/>). 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.
5. All materials, including this form, shall be submitted in three (3) photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name TLRLLC	2. Contact Person Paige L Clew Deponte	
3. Address	4. City Kula	5. State and ZIP Hi
6. Email	7. Phone	8. Fax

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

C. SUBJECT MATTER	
17. Board Action Being Contested Violation of Hawaii Administrative Rules Chapter 13-22 1, Unencumbered Public Lands, Sections 13-221-11 "Animals" and 13-221-35 "Commercial Activities",	
18. Board Action Date April 27 2018	19. Item No. D-3-1
20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action Owner Paige Deponte of TLR LLC (Triple L Ranch) and immediate family who work the ranch as their sole source of income derived from cattle and auxiliary uses, shall face immediate financial distress if fined and any violations affirmed. The ranch operates on a month to month; hand to mouth basis. The cattle since 1958 and its auxiliary uses: agricultural horse tours since 2011, and a Agricultural Food establishment Bully's Burgers 2011(Closed by county 12/7/2016 because of complaint from a "Ruth Patton", Deponte has been unable to locate all owners to contest complaint due to nature of the Hui lands and many issues finding who has actual ownership and is alive today) Currently owner has been inundated for 22 months by a woman who calls herself Ruth Patton, multiple agency complaints and online harassment. There have to our knowledge, been no real owner (Kanaio) complaints ever regarding the ranch or otherwise. The emotional and financial abuse alone from Ruth Patton's harassment has created intense financial stress on ranch the family financially due to legal fees and investigations. Claims that we make thousands of dollars a day is just not true and I welcome your looking at our accounts.	
21. Any Disagreement Petitioner May Have with an Application before the Board 1 I Informed the BLNR that I am the owner and or partial owner of multiple separate parcels located within and completely surrounded by the larger parcel owned by the State of Hawaii. (I also have multiple grazing lease to additional parcels within this area the owners also have Royal patent deeds.) 3. The Royal Patent Grant parcels for which I have an ownership interest have always been accessed by an existing road and or an implied easement for four generations. (See State Land TMK records show easement to Louis Deponte SR.) 4. I conduct cattle ranching operations as the principal use on these Royal Patent Grant parcels in conformity with permitted uses in State agricultural districts and County agricultural zoning areas. I also take guests, as an auxilliary use, on my parcels. 5. When I go to my parcels with guests, I do not ride around on State land but only ride through state parcel to get to my parcels or on the old road to get to my parcels. It is these parcels that are the destination for our crew and my guests and not the state land. It is a similar situation to a tour bus taking tourists over a state highway to a resort. The tour bus operator, traveling over a state road, is not required to have	
22. Any Relief Petitioner Seeks or Deems Itself Entitled to I would like the violations and fines waived. The hearing and the notice of it, are the first "actual-written notice" to be received. I have had conflicting emails from Daniel Ornellas; one says "will I come in to apply for permits" and I ask for a meeting, then nothing happens. (See email attached) Another that states my tours begin and end on private property and are not his jurisdiction. Very confusing. I then reached out to Chair Case and Mr. Tsui to cure any permit or easement issues with them as I have had not had any reply. Chair Case sent me a letter Oct 2017 stating clearly that the board makes permits and easement decisions so I requested how to do that, and still	

received no response, so this has been extremely confusing at best. Our family has been of the understandings that we have had use and an implied easement as Royal Patent land owners, us also as major interest owners, in multiple parcels of lands to go from our land to our land. That my ranch is also an approved state and county agricultural entity in such zoned area. And that my auxiliary uses from my land to my land are within those rights. The term "commercial appears and I am also of the understanding that I am an Agricultural producer NOT a commercial producer, save being a commercial agricultural ranch. Lots of things have changed on Maui new rules, new laws. Being called a "commercial entity" is new I have four horses for my tours I am not a commercial trial riding operation. I go out five days a week. To check cattle, it helps pay the increasing high cost of doing business. That is it. We do don't "use" State land we use the roads and trails to get to our land I was under the impression that road to Kanaio beach was ours to use for checking cattle checks. If the state wishes me to not use it they should state clearly exactly what they mean please. Is the road actually a state road, this is also very unclear. I have tried to find solutions, and have been either ignored or accused of wrong doing and treated like a criminal. I am a tax payer operation a small ranch making a living as best we can and helping the DLNR buy riding daily we discourage illegal hunting. We also do a lot of coastline clean up see photos.

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

For the last seven years our ranch has proved itself by exhibiting good pasture mangement (no fires in the area) we have been active in maintianing and regulating the area as "our kuliana" doing our part, DLNR has not had the resouces to regulate the area daily Because of my cattle checking there has been signifucant reduction in illegal hunting. A significant reduction in coastline trash, washedup on the shore as we clean the coast when we go down to the area for breaks. I have pulled countless debris and garbage left from weekend fisherman, nets, human waste, bottles and beer cans from people drinking alcoholic beverages litering the area. We never asked for any help we just do it, and have for four generations. We have been an asset not a liability, yet I feel we are being persecuttet for our efforts. I have spent my life creating awareness of issues facing the enviornment. Two books and five documentaries. I have won a few awards for them. It is a passion. I would like to work with the DLNR; we are all about conservation. I alknowldege BLNR has plans for the area for example: the Kanaio Game Management proposal, I undertsand that is a long process that will require an enviornmental assessment and also it will be required that an archiological assessment will have to be done for the 623 sites in the area will demand it. These take years. In the mean time it is our cultural practice to raise cattle and cross from one parcel of our land to the next, I do not use state land as a tour. Shutting us down with fines and preventing us from earning a living will destroy our rights to be active Maui farmers as well as this bieng a woman owned ranch. I feel we are an asset, with all odds against us when my huisband passed away we worked hard to keep the ranch going. The violations and fines will destory us. The small farms on Maui are the last treasures we have left. This ranch is a postive, Our BURget stand was a huge success and the tours while small are educational. I teach people history and educate them on the area. This shold be respected not destroyed.

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

I have listened to the Board and DLNR. You do not want us using the Kanaio coast for breaks. We will not. As for the term "Comercial" I am not a commercial trail ride company. I am no different than a flower farm doing walking tours, I just use horses. I would like to ask the board for a permit or easement rather than throw under the bus can we work together. The report by officer Decambra is only his "word" no affidavits, no proof, and not formal witness statements. He "thought" we were going to the beach when we were only using the road. I am reusted leancy andas this is our first formal violation to wave the violation and fines. To begin again with a new relationship by working toward a postive outcome for everyone.

☒ 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. *7 pages*

Paige Claw DePorte
Petitioner or Representative (Print Name) *[Signature]* Signature *5/7/2018* Date
TR LLC, member
Triple L Ranch

Incl.
Exhibit A-g

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paige

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Re: Triple L Ranch Private Custom
Trail Rides

Paige/Kensio ...

Daniel Daniel Ornelas
District Land Agent at State of ...

Ornelas, Daniel L. From: DLNR.LD.Li Feb 2, 2017 at 8:27 AM

Ornelas, Daniel L. Ms. DePonte, The Feb 2, 2017 at 9:00 AM

Ornelas, Daniel L. Questions: Are the Feb 2, 2017 at 9:13 AM

Ornelas, Daniel L. Feb 2, 2017 at 9:32 AM

To: Paige DePonte
Cc: Brian R. Jenkins,
Rodriguez, Howard J., Fretz, Scott
, De Silva, Lance K,
De Mattos, Shane

The photos on Yelp that advertise commercial activities of Triple L Ranch are clearly on unencumbered government lands.

Hawaii Administrative Rules (HAR) §13-221-35 requires persons conducting commercial activities on State unencumbered land to obtain a permit from the Department.

Commercial activity, pursuant to HAR §13-221-2, "means the use of or activity on state land for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity ...

Mr. Jenkins, do you plan to have your client apply for a permit to conduct commercial activities on government lands. If so, please be advised that compliance with HRS 343 is the first step. Please advise.

Daniel Ornelas
District Land Agent

> Show original message

Brian R. Jenkins Paige, Make an ap Feb 2, 2017 at 10:51 AM

Pd <deponterpaige@yahoo.com> Feb 2, 2017 at 11:03 AM
To: Brian R. Jenkins

Brian
I'm very sorry I considered all the issues related due to their person and nature behind them.

I will make an appointment
Paige

Exhibit B

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RE: Triple L Ranch Commercial Trail-Rides: Facebook & Twitter 4

Paige/Kamaio ...

Daniel Daniel Ornelas District Land Agent at State of ...



Ornelas, Daniel

Jan 9, 2017 at 8:25 AM

To: Mandy Patton,
Merle Tashiro,

Gagne, Betsy H,
Pacheco, Larry J
Cc: Paige Deponte

Please be advised that the County of Maui would be the agency to enforce zoning codes related to commercial land uses within the agriculture district. Especially since the activity originates from private property.

From: Mandy Patton
Sent: Sunday, January 08, 2017 5:58 PM
To: Merle Tashiro; Ornelas, Daniel L;
Betsy H; Pacheco, Larry J
Cc: Paige Deponte
Subject: Triple L Ranch Commercial Trail-Rides: Facebook & Twitter

[Triple L Ranch Maui Private Custom Horseback Riding | Facebook](#)

[Triple L Ranch Maui Private Custom Horseback Riding | Facebook](#)

Triple L Ranch Maui Private Custom Horseback Riding, Kula, HI.
418 likes · 6 talking about this · 38 were here. ...

[Triple L Ranch Maui Private Custom Horseback Riding added 2 new photos](#)

9 hrs ·

JANUARY Kama'aina Special till the end of the month!! Party of Two 2hr rides JUST \$125!!



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Triple L Ranch Request for meeting in
Honolulu

Paige/Sent



paige Deponte 🔍



paige
Deponte

Feb 8, 2017 at 9:56 AM

To: Suzanne Case

Dear Ms Case and Mr Tajul,

At the advise of our land attorney on Maui, and his review several matters with our family I would like to request a meeting with you in Honolulu to discuss several things.

1. Our acquiring rites of passage easements in Kanaio from our parcels to each other and other lands apparently required by your department. As you are aware, I am not able to work with Mr Daniel Ornelas on this as I have mentioned in previous correspondence

2. An on going situation regarding Maui Land agents (DLNR/ DOFAW) (Ornelas) (documented harassment/shakedown)

I know that you both are extremely busy but would appreciate if at all possible a meeting next week with both you and Russel Tajul if you have time. I am sure the meeting will not require much time ans will be both productive for us all.

Respectfully

Paige De Ponte.

EM:
www.paigedeponte.com
www.sylpaige.com

ART GALLERIES:
MALIBU: <http://www.malibuartistsunite.org>
NYC: www.salomonsarts.com
LONDON: http://www.theworks-gallery.com/artists/bio/paige_de_ponte
WORLDWIDE: <http://www.saschiart.com/paigedeponte>

Triple L Ranch & Bullys Burgers
www.triplelranhmaui.com



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Exhibit D

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Paige
rybillpaige

Fwd: Please contact me as soon as possible 2

Paige/Sent

Pd Dear Mr RODRIGUES, One of your as Mar 26 at 12:20 PM



paige Deponte

inbox
unread
starred
drafts 10
sent
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spam
trash
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Documents
Travel
Coupons
Tutorials
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Airbnb MAUI
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illy Burgers LA
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Pd To: Suzanne D. Case Mar 26 at 12:30 PM

Please see email

Paige De Ponte.

cm:
Triple L Ranon Private Horseback Tours
www.triplelranonmaui.com

Nobody's Girl BOOK: www.sylviaaigee.com
PHOTOGRAPHY & ART GALLERIES:
MALIBU: <http://www.malibuartistsunite.org>
NYC: www.salomonsarts.com
MAUI: www.kameligallery.com

Begin forwarded message:

From: Pd
Date: March 26, 2018 at 12:20:24 PM HST
To:
Subject: Please contact me as soon as possible

Dear Mr RODRIGUES,

One of your officers is harassing my crew while checking cattle once again please contact me I have never been informed formally though I have requested meetings repeatedly with Suzanne Case Russell Tajui Jimmy Gomes daniel Omellas now I'm informed that you are now in charge and in fact sent an officer down to harass intimidate and interrogate my Cattle crew while checking cattle today the day of the seven year anniversary of my husband's death which I find is completely despicable behavior.

Today was a very important ride as you know no one illegally hunts while I am riding my horses checking cattle

I am an agricultural producer I have a right to do agricultural Tours I have a right to keep invasive species from invading the pasturalands we have been doing this for 80 years we have been doing tours for seven years I have repeatedly asked for information if required what kind of permit I need to have some sort of resolution intimidating my crew interrogating my crew is completely unacceptable behavior.

As you know five F trust Land is for the public and for farm use only which that 5900 is designated it's not to be used for anything else for the sole purpose to the benefits and improvement for the Hawaiian people that means people living in Hawaii and farmers we are the only producers in Kaneohe we have done a very good job out here people respect us rather than sitting down with me and holding a meeting in a professional manner you send out thugs to intimidate and frighten people in my crew. This is clearly harassment and intimidation I will ask one more time as I have been informed by my attorneys what I am doing is legal if it is illegal doing Cattle check Tours then someone should come to me and tell me what I need to do to correct the situation this has never happened please call off officer to Cambra. Please contact me thank you very much.



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sybilpaige

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Photos

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Tutorials

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+ New Folder

4 WALLS

7791 Kula Hwy

Airbnb

Airbnb Maui

Art

Artists new

Artists Square

Auto

Banking

Bays

Bully Burgers Maui

Bully Burgers LA

Computer

DoTerra

Drafts

Dubin

Equine Therapy

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Film

Film 2015

Film 2018

Health Ins.

Investment propert...

It Works

JG

Kamali Gallery

Kanaloa Comm Assn

Kanaloa OHO

Kanaloa Legal

Kanaloa Stalker

Kauai

Legal and Mortgage

Loan 2016

MAUI PIER ART

Triple L Ranch

Paige/Sent



paige
DePonte

May 10, 2017 at 7:52 AM

Aloha Jimmy

Attached is a segment of the letter which I'm interested in discussing the term noted "commercial use" on state lands.

I am also interested in obtaining easements from parcel to parcel and highway to parcels we have interest in; in Kaneohe

The letter itself for the most part is in regards to other items non related at this time.

For the purpose of my inquiry, Case stated the attached comment.

In lieu of this comment, and per your request:

Triple L Ranch cattle operations include tours by horseback where our have cattle free ranged for the past half century.

Brian suggested I inquire with you about how TLR LLC (Triple L Ranch) obtains such permission, lease(?) easement or authorization and or a commercial license (?) if the ranch tours in fact need such at this time. What this entails.

TLR LLC is a limited liability company, we have liability insurance, GE and so forth.

Chair Case's comment is the first time we have heard such and want to be sure we are operating with the expected if any requirements and if not be sure to get the requirements if needed fulfilled.

Thank you
Paige

Paige DePonte,
MEd
EM
ARE: www.paigedeporte.com
Book: www.sybilpaige.com

ART GALLERIES:
MALIBU: <http://www.malibuartistsunite.org>
NYC: www.salomoniarts.com
LONDON: http://www.theworld-gallery.com/artists/bio/paige_de_ponte
WORLDWIDE: <http://www.seastohart.com/paigedeporte>

Triple L Ranch & Bullye Burgers
www.triplelranchohawaii.com



2017-05-08 ...pdf
1MB

Finally, please note that commercial uses of State lands can only be authorized by the Board. Unauthorized commercial use of State lands can subject the responsible parties to civil and criminal penalties under Chapter 171, Hawaii Revised Statutes.

Sincerely,

Suzanne D. Case
Suzanne D. Case
Chairperson

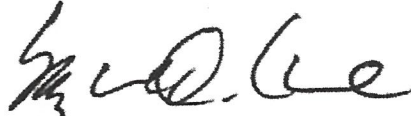
Office of the Chairperson

Reply, Reply All or Forward

Exhibit F


Finally, please note that commercial uses of State lands can only be authorized by the Board. Unauthorized commercial use of State lands can subject the responsible parties to civil and criminal penalties under Chapter 171, Hawaii Revised Statutes.

Sincerely,



Suzanne D. Case
Chairperson

C: Office of the Ombudsman



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Re: Triple L Ranch 2

Paige/Kanalo ...



Sybil Paige

Aloha Jimmy Thank you

May 8, 2017 at 5:27 PM



Jimmy Gomes

To: Sybil Paige



May 8, 2017 at 7:27 PM

Aloha Paige,

Per our conversation, if I understand, you said you received a letter from Chair Case about your issues for Commercial Activities. Can you email me a copy of that letter and also what are your plans that you want to implement on State lands. I would like to review them and ask staff questions that I may have. I will then call you to set up a meeting.

Mahalo,

Jimmy

Sent from my iPad

> Show original message



Reply, Reply All or Forward



Jimmy Gomes

Operation Manager at UL...

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