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Duke's Lagoon LLC
1741 Ala Moana Boulevard, Unit 84
Honolulu, Hawaii 96815

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

April 29, 2021 DRAFT

Ms. Suzanne D. Case
Chairperson
Department of Land and Natural Resources
Commission on Water Resource Management
Post Office Box 621
Honolulu, Hawaii 96819

Re: *April 14, 2021 Correspondence to Duke's Lagoon LLC*

Aloha e Ms. Case,

We write in response to your letter dated April 14, 2021, where you instructed Duke's Lagoon LLC to cease and desist presetting any beach chairs and umbrellas on State land identified as Duke Kahanamoku Beach. Upon being informed by a DOCARE officer on April 9, 2021, of the issue with presetting, Duke's Lagoon immediately stopped placing beach chairs and umbrellas on the beach before the arrival of any guests. Our willingness to amend our practice is not an admission of liability as we feel that the presetting of beach chairs and umbrellas on the beach does not violate HAR Section 13-221-35.

As we informed the DOCARE officer on April 9, 2021, Dukes Lagoon does not engage in commercial activity on the beach. Duke's Lagoon is a commercial tenant of the Ilikai Retail and is authorized to conduct business at the Ilikai relating to the renting of beach equipment and surf lessons. Guests of the Ilikai rent beach equipment either through Duke's Lagoon's website or at our store front at the Ilikai. After the beach equipment is rented, Duke's Lagoon, to provide customer service to our customers, will set up the equipment on the beach.

Duke's Lagoon believed that its prior practice of setting up pre-rented beach equipment complied with HAR Section 13-221-35 as Duke's Lagoon was visited by DOCARE Officer Robert Paulele, on March 8 and Officer Rivera, on March 12, and neither issued Duke's Lagoon a citation. In fact, Officer Paulele informed our employee during his visit that Duke's Lagoon was not in violation of HAR Section 13-221-35.

Duke's Lagoon only became aware that presetting may be a violation when Officer Tahiguci visited our shop on April 9, 2021. To understand Officer Tahiguci's finding, we asked Officer Tahiguci and as well as DLNR employees, Barry Cheung, and Russell Souji, to provide the rules and regulations defining presetting and its prohibition, all have been unable to provide any rules and regulations defining the prohibition of presetting.

Ms. Suzanne D. Case
April 29, 2021 DRAFT
Page 2 of 2

As we did not engage in the rental of beach equipment on the beach and merely set up the equipment for guests after the completion of the transaction, we do not believe such a practice violates the law. Nevertheless, as we have now been asked to not preset any beach equipment and to wait to assist guests when they are physically present on the beach, we conformed our practice and have done so since Officer Tahiguci's visit of April 9, 2021. As such, we would respectfully request that Department not pursue an enforcement action with the Board of Land and Natural Resources.

Sincerely,

Chris Sanger
Duke's Lagoon LLC